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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 57, No. 115

Monday, June 15, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is rescinding portions of the interim regulations issued by OPM on May 3, 1991 (56 FR 20334), which have not yet been made final, to implement the decision of the U.S. District Court for the District of Columbia (*National Treasury Employees Union* v. *Newman*, Number 83–0279 (D.D.C., June 28, 1991)), in which the court ordered OPM to promulgate a conversion rule for adjusting the pay schedules of employees paid special salary rates as required by 5 U.S.C. 5305(f) and as consistent with the guidelines set forth in the decision.

DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On June 28, 1991, the U.S. District Court for the District of Columbia issued a decision, cited above, affecting the manner in which the pay schedules of certain Federal employees paid special salary rates shall be adjusted in anticipation of salary adjustments made in the relevant underlying statutory pay schedules. The court concluded that OPM must consider the following factors when formulating the appropriate "conversion rule" for adjusting the pay schedules of special salary rate employees:

(1) OPM must take into consideration the former non-special pay rate of the special rate employee to avoid any action that would allow the salary of a special rate employee to fall below the salary the employee would have received if still a non-special rate employee.

(2) The starting point for making any adjustment shall be the statutory increase given to non-special rate employees. The reasoning behind this step is that the factors leading to a statutory increase in pay will most likely affect the special rate employee as well.

(3) OPM should then review the special pay rate in a given occupation and location to determine whether an adjustment is necessary to recruit and retain special rate employees. (It may be that such a review was undertaken prior to the date of the statutory pay increase.) Such a review may lead to a determination, taking into consideration such matters as special rate pay adjustments that year or in previous years, that no increase is necessary for the special rate employees, notwithstanding that there is a statutory increase for non-special rate employees, or that an increase that is greater than the statutory increase is necessary for the special rate employees in order to recruit and retain such employees in the involved occupation and location.

(4) OPM will make such adjustment based on the requirements of 5 U.S.C. 5305, not for mechanical reasons or for the purpose of automatic adjustments.

In view of the court's decision, interim regulation 5 CFR 530.307(a) is being rescinded because it contains an automatic adjustment mechanism that the court concluded would not be proper. Elsewhere in this **Federal Register** issue, OPM is proposing that interim regulation 5 CFR 530.304, providing for an annual review of special salary rate schedules, be amended in order to have it conform with the court's criteria. Proposed regulation 5 CFR 530.304 requires OPM to conduct a review of existing special salary rate schedules prior to the effective date of an adjustment in the scheduled rates of pay, or at least annually, to determine the extent to which that adjustment shall apply to the special rate schedules. The criteria OPM considers include giving full consideration to the court's guidelines in conjunction with the factors that appear in 5 CFR 530.303 of the interim regulations. In accordance with the changes made in 5 CFR 530.304, necessary revisions have also been proposed in 5 CFR 530.307.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. Section 530.307(a) of the interim regulations is being rescinded immediately because it does not comply with a decision of the U.S. District Court for the District of Columbia. The notice is being waived and the rescission is being made effective immediately to enable OPM to implement the court's decision at the earliest practicable date.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 continues to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

§ 530.307 [Amended].

2. In § 530.307, paragraph (a) is removed and paragraphs (b), (c), and (d) are redesignated as (a), (b), and (c), respectively.

[FR Doc. 92-13817 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Neomycin Sulfate Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pfizer, Inc. The ANADA provides for the use of a generic neomycin sulfate soluble powder for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed ANADA 200-046 which provides for the use of a generic neomycin sulfate soluble powder for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate in cattle (excluding veal calves), swine, sheep, and goats. The neomycin sulfate soluble powder covered by ANADA 200-046 is a generic copy of the Upjohn Co.'s FDA-approved product (NADA 11-315). The data in ANADA 200-046 demonstrate that Pfizer, Inc.'s generic neomycin sulfate soluble powder satisfies the requirements of the Federal Food, Drug, and Cosmetic Act as amended by the Generic Animal Drug and Patent Term Restoration Act of 1988. Accordingly, the ANADA is approved as of May 15, 1992, and 21 CFR 520.1484 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

There are no current patent or exclusivity rights which would prohibit this approval.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1484 is amended by revising paragraph (b) to read as follows:

§ 520.1484 Neomycin sulfate soluble powder.

* * * * *

(b) *Sponsors.* See Nos. 000009 and 000069 in § 510.600(c) of this chapter.

* * * * *

Dated: June 8, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-13965 Filed 6-12-92; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

June 9, 1992.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning July 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after July 1, 1992 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the Subpart C formulas to

determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1992. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after July 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6½ percent to 6¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after July 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good causes exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 97 of appendix B is revised and Rate Set 98 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date: On or after	For plans with a valuation date: Before	Immediate annuity rate (%)	Deferred annuities: k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
97	3-1-92	7-1-92	6.50	1.0575	1.0450	1.0400	7	8
98	7-1-92	....	6.25	1.0550	1.0425	1.0400	7	8

Issued in Washington, DC, on this 8th day of June, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-13970 Filed 6-12-92; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1992.

EFFECTIVE DATE: July 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC finds the notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United

States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:														
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*	*	*	*	*	*	*									
July 1992	.06625	.065	.06375	.0625	.06125	.06	.06	.06	.06	.06	.05875	.05875	.05875	.05875	.05875	.055

Issued at Washington, D.C., on this 8th day of June 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-13971 Filed 6-12-92; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-92-21]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This document implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 28, 1992. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATE: The regulations in 33 CFR 100.507 are effective from 7:30 a.m. to 1 p.m., June 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (301) 576-8516.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QMI Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Mr. Charles Nabit, representing the March of Dimes submitted an application on April 7, 1992 to hold the Great Chesapeake Bay Swim Event on June 28, 1992. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.507 are being implemented. Vessel traffic will be permitted to transit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted.

Dated: June 5, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92-13967 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. G-54, Supp. 1]

Use of Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR temporary regulation G-54 mandates the use of the GSA's contractor by Federal civilian executive agencies when next day express small package transportation is required. The regulation contains a description of the services provided, an appendix listing the rates and accessorial charges, and information concerning the provisions of the contract. This supplement extends the expiration date of FPMR Temp. Reg. G-54 which, as revised, reflects the current contract.

DATES: Effective Date: January 15, 1992. Expiration Date: November 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Pollock, Transportation Management Division, 703-305-5671.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Under the Administrator's authority, 40 U.S.C. 486(c), 41 CFR chapter 101 is amended by adding FPMR Temp. Reg. G-54, Supplement 1 to the appendix at the end of subchapter G to read as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

Appendix to Subchapter G—Temporary Regulations

* * * * *

[FPMR Temp. Reg. G-54; Supplement 1]

April 16, 1992.

Use of Contractor for Express Small Package Transportation

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G-54.

2. *Effective date.* This supplement is effective January 15, 1992.

3. *Expiration date.* This supplement expires November 15, 1992, unless sooner canceled or revised.

4. *Background.* FPMR Temporary Regulation G-54, dated July 9, 1991, prescribes policies and procedures applicable to Federal agencies when transportation of express small packages from, to, and between specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, is required and the contractor or its agent provides next day service. This regulation also identifies the contractor and the effective rates.

5. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation G-54 is extended to November 15, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-13747 Filed 6-12-92; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6930

[NM-940-4214-10; NMNM 81795]

Withdrawal of Public Land for Wild Rivers Recreation Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,979.94 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Wild Rivers Recreation Area near the vicinity of Cerro, New Mexico. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-7115, 505-438-7593.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Wild Rivers Recreation Area:

New Mexico Principal Meridian

T. 28 N., R. 12 E.,
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, N½SW¼, and SE¼;
Sec. 6, lot 1, and SE¼NE¼;
Sec. 8, E½E½ and E½W½E½;
Sec. 9, NW¼NE¼, W½SW¼NE¼, W½SW¼, W½E½SW¼, and NE¼NE¼SW¼;
Sec. 16, NW¼NW¼;
Sec. 17, E½NE¼ and E½W½NE¼.
T. 29 N., R. 12 E.,
Sec. 22, W½SW¼ and W½E½SW¼;
Sec. 27, W½W½E½ and W½;
Sec. 28;
Sec. 29, lots 1 to 8, inclusive, E½E½, SE¼SE¼NW¼, E½NE¼SW¼, and SE¼SW¼;
Sec. 31, SE¼SE¼;
Sec. 32, E½NW¼NW¼;
Sec. 33;
Sec. 34, W½.

The area described contains 4,979.94 acres in Taos County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: June 3, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-13986 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-FB-M

43 CFR Public Land Order 6931

[CO-930-4920-10-4329; COC-53301]

Transfer of Public Land for the Gunnison Disposal Site; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order permanently transfers 115 acres of public land to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Remedial Action Amendments Act of 1988.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-1706.

By virtue of the authority vested in the Secretary of the Interior by the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916 (1988)), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby permanently transferred to the Department of Energy, and as a result of this transfer, the land is no longer subject to the operation of the general land laws, including the mining and mineral leasing laws, for the Gunnison Disposal Site:

New Mexico,Principal Meridian

T. 49 N., R. 1 E.,
Sec. 15, S½SW¼NE¼NE¼, S½S½N W¼NE¼, SW¼NE¼, W½SE¼NE¼, S½SE¼NE¼NW¼, NE¼SE¼NW¼, N½SE¼SE¼NW¼, SE¼SE¼S E¼NW¼, NE¼NE¼NE¼SW¼, N½NW¼NE¼SE¼, and N½N½N W¼SE¼.

The area described contains approximately 115 acres of public land in Gunnison County.

2. The transfer of the above-described land to the Department of Energy vests in that Department the full management jurisdiction, responsibility, and liability for such land and all activities conducted thereon, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land established before the effective date of the transfer.

Dated: June 3, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-13985 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-139; RM-6711, FCC 92-232]

Private Land Mobile Radio Services; Fire Radio Frequency Power Increase

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: To improve on-the-scene fire fighting communications, the Commission has adopted a *Report and Order* that increases the allowable transmitter power for the Fire Radio Service frequency 153.83 MHz to 100 watts and restricts the use of this frequency to mobile use.

EFFECTIVE DATE: The effective date of the rule change is July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91-139, adopted May 22, 1992, and released June 5, 1992. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, telephone (202) 452-1422.

Summary of Report and Order

The Fire Radio Service frequency 153.83 MHz is currently designated for mobile and fixed use and is limited to a transmitter output power of 10 watts. In May 1991, a Notice of Proposed Rulemaking, 56 FR 25650, June 5, 1991 6 FCC Rcd 3426 (1991) was released that proposed to increase the authorized transmitter power from 10 watts to 100 watts and eliminate the fixed use designation. This *Report and Order* amends the Commission's Rules by adopting these proposals. These changes will permit increased on-the-scene fire-fighting communications capability.

List of Subjects in 47 CFR Part 90

Private land mobile radio, Fire Radio Service, Radio

Amendatory Text

47 CFR part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 and 332 unless otherwise noted.

2. 47 CFR 90.21 is amended by revising the entry for 153.83 in the table in paragraph (b) and by adding paragraph (c)(18) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
153.83	Mobile	18
*	*	*

(c) * * *

(18) The maximum output power of any transmitter authorized to operate on this frequency shall not exceed 100 watts. Stations authorized prior to July 15, 1992 for fixed operations will be permitted to continue such operations, but at a maximum transmitter power output of 10 watts.

* * * * *

3. 47 CFR 90.555 is amended by revising the entry for 153.830 in the table in paragraph (b) to read as follows:

§ 90.555 Combined Frequency Listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
*	*	*
153.830	PF	Max. Power 100 W.
*	*	*

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13671 Filed 6-12-92; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513 and 552

[APD 2800.12A CHGE 40]

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is amended to revise paragraph (a) to delete unnecessary language, revise paragraph (b)(1) to increase the threshold for use of certified invoice procedures and to amend paragraph (g) of section 513.7001; and revise section 552.242-70 to delete the requirement for the use of GSA Form 1678 as a cover page when submitting the required information via an automated printout form in lieu of the GSA form. Copies of GSA forms may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Sts., NW., Washington, DC 20405. The intended effect is to provide guidance to GSA contracting activities and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: June 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (VP), (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501-1.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule was not required to be published in the **Federal Register** for public comment.

D. Paperwork Reduction Act

This rule contains an information collection requirement that has been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned OMB Control No. 3090-0027. The title of the collection is 48 CFR part 546, "Status Report of Orders and Shipments." The clause requires contractors to submit a monthly report showing the status of processing of orders received under the contract. The estimated annual burden for this collection is 3,900 hours. This is based on an estimated average burden hour per response of approximately 2 hours, 1 response per respondent, and an estimated 300 respondents per year. No

greater burden is imposed by this rule. Comments on the information collection may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 513 and 552

Government procurement.

Accordingly, 48 CFR parts 513 and 552 are amended to read as follows:

PART 513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR parts 513 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 513.7001 is amended by revising paragraphs (a), (b)(1), and (g) to read as follows:

§ 513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

(a) When advantageous to the Government, supplies or services may be acquired on the open market from local suppliers using vendors' invoices instead of purchase orders. Certified invoice procedures may not be used to place orders under established contracts unless authorized in the contract.

(b) * * *

(1) The amount of any one purchase is $2,000 or less for construction services and $2,500 or less for supplies or service other than construction.

* * * * *

(g) Upon receiving the invoice, the receiving office shall time-stamp the invoice to indicate the date the invoice is received, verify the accuracy of the invoiced amount, and verify that the supplies and/or services have been received and accepted. The contracting officer or a designated representative shall obtain a certification of receipt and acceptance from the individual that actually inspected and accepted the supplies and/or services before certifying the invoice and forwarding to the appropriate Finance Division for payment. Supplies and/or services should be inspected and accepted or rejected within 7 calendar days of delivery/completion. The invoice must be forwarded to the appropriate Finance Division for payment within 5 workdays after receipt of the invoice or acceptance of the supplies and/or services, whichever is later. Before forwarding the invoice to Finance, the contracting officer shall stamp it with the Certified Invoice Stamp, complete the accounting information, type of business (corporation, sole proprietorship/partnership, or other), and certification, and affix the ACT number label. If a Certified Invoice Stamp is not available, place the following statement on the invoice along with the ACT number label, accounting information and the type of business. (Note: In some organizations, the ACT number label is affixed by a budget or executive office within the service or staff office.)

"I certify that these goods and/or services were received on *[Date]* and accepted on *[Date]*. An oral purchase was authorized and no confirming order has been issued."

Signature of Contracting/Ordering Officer

Print name and telephone No.
120Date Invoice received ———

3. Section 552.242-70 is revised to read as follows:

§ 552.242-70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

Status Report of Orders and Shipments (Apr 1992)

(a) The contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instruction on the form. The information required by the GSA Form 1678 may also be submitted in an automated printout form if authorized by the ACO. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [Contracting Officer insert appropriate telephone number of FQC]. Reports shall be forwarded to the ACO no later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or reproduced by the Contractor.

(End of Clause)

Dated: June 1, 1992.

Arthur E. Ronkovich,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 92-13762 Filed 6-12-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 74]

RIN 2127-AD10

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration; Technical amendment.

SUMMARY: This notice responds to the two petitions asking for reconsideration of this agency's final rule extending the automatic crash protection requirements currently applicable to passenger cars to light-duty trucks, buses, and multipurpose passenger vehicles. This notice corrects a typographical error noted in one of the petitions, but denies the petitions in all other respects. More specifically, this notice denies a request to change the test conditions to eliminate the claimed effects of electrostatic discharge on the force measurements recorded during compliance testing. The petitioner did not present any evidence to show either that electrostatic discharge occurs during compliance testing or how, even if an electrostatic discharge were to occur, it would affect the force measurements recorded. This notice also denies requests to change the language specifying the distribution of the test load and the applicability of the phase-in requirements to multistage vehicles, because such changes are unnecessary. Finally, this notice denies a request to exempt multistage vehicles from the automatic crash protection requirements. Since the petitioner presented no new information or arguments to support its request, NHTSA has no basis for reaching a different conclusion than it reached when it previously considered this issue.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cohen, Chief, Frontal Crash Protection Division, NRM-12, room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-2264.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection (49 CFR 571.208), is intended

to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. As one means of achieving these goals, Standard No. 208 has long required the installation of safety belts in passenger cars. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Vehicle seating positions equipped with automatic crash protection protect their occupants by means that require no action by the occupants. The effectiveness of a vehicle's automatic crash protection is dynamically tested; that is, a vehicle must comply with specified injury criteria, as measured on a test dummy, when tested by this agency in a 30 mile per hour barrier crash test. The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (whose automatic nature helps to encourage belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). Automatic crash protection in cars will save thousands of lives and prevent tens of thousands of serious injuries each year when all cars are so equipped.

NHTSA decided it was appropriate to consider whether other light-duty vehicles should be required to provide automatic crash protection. The agency focused on trucks, multipurpose passenger vehicles (such as passenger vans and four-wheel drive utility vehicles), and buses, all with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles are collectively termed "light trucks" throughout the rest of this preamble. Although Standard No. 208 has long required the installation of safety belts at all designated seating positions in light trucks, it has not required those vehicles to provide automatic crash protection. NHTSA concluded that automatic crash protection in light trucks could prevent more than 2,000 fatalities and more than 28,000 serious injuries every year. Moreover, the agency concluded that it would be feasible to equip light trucks with automatic crash protection and that this could be done at a cost that was very reasonable in relation to the safety benefits. These factors led NHTSA to propose to require automatic crash protection in light trucks in a notice of proposed rulemaking (NPRM) published on January 9, 1990 (55 FR 747).

The NPRM proposed to measure the performance of the light truck automatic crash protection by using the same dynamic crash test procedures specified in Standard No. 208 for passenger cars. Additionally, the NPRM proposed to ease the implementation of the light truck automatic crash protection requirements by phasing them in, as was done with the passenger car automatic crash protection requirements. Finally, to encourage the production of the light trucks with air bags, it proposed to provide a "one-truck credit" for vehicles with an air bag at the driver's position and a manual safety belt for the other outboard front seat occupant. The provision is similar to the "one-car credit" provided in Standard No. 208 for passenger cars. (See S4.1.4.3 of Standard No. 208.)

NHTSA received 34 comments in response to this NPRM. Commenters included vehicle manufacturers, air bag suppliers, trade associations, representatives of the insurance industry, academia, other governmental agencies, and consumers. Several of the manufacturers commented that they would have difficulty complying with some or all of the elements of the proposed implementation schedule. To further explore the issues raised by these comments, NHTSA requested additional information from five vehicle manufacturers (Chrysler, Ford, General Motors, Mazda, and Toyota) on May 24, 1990.

NHTSA considered and analyzed all of the comments and other submissions by the public in developing the final rule published on March 26, 1991 (56 FR 12472). That final rule essentially adopted the requirements proposed in the NPRM, with some minor modifications. The automatic crash protection requirements for light trucks will be phased-in over a period of several years, beginning with light trucks manufactured on or after September 1, 1994. Compliance with the automatic crash protection requirements will be evaluated by conducting the same type of test and using the same injury criteria as Standard No. 208 specifies for passenger cars. Final stage manufacturers and alterers will not be required to assure that a specified percentage of their vehicles comply with the automatic crash protection requirements of Standard No. 208 during the phase-in period. However, once the phase-in is completed, all subject light trucks, including those produced by final stage manufacturers and alterers, must be equipped with automatic crash protection. Interested readers may wish to review the March 26, 1991 final rule for more details about its provisions.

Petitions for Reconsideration

Two timely petitions for reconsideration of the March 26 rule were filed with NHTSA. The petitioners were Ford Motor Co. (Ford) and the National Truck Equipment Association (NTEA). Ford requested the agency to modify the test criteria to reduce test variability; to specify more precisely vehicle loading during compliance tests; and to clarify the applicability of phase-in attribution requirements to multi-stage vehicles. NTEA argued that there was no safety need to extend the automatic crash protection requirements to multi-stage work-related light trucks. It argued also that, because of certification difficulties, the requirements were impracticable for final stage manufacturers. Finally, it argued that the agency improperly concluded that the requirements would have no impact on small businesses.

NHTSA Authorization Act of 1991

On December 18, 1991, the President signed into law legislation which includes provisions mandating the installation of air bags in light trucks. That legislation is the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). The air bag provisions for light trucks appear in Title II, Part B of that Act, also known as the National Highway Traffic Safety Administration Authorization act of 1991. Section 2508 (105 stat. 2084–2087) provides that the agency must amend Standard No. 208 to require that the driver's and the front right passenger's seats in light trucks be equipped with air bags. This requirement must apply to 80 percent of each manufacturer's annual production of light trucks manufactured on or after September 1, 1997, and before September 1, 1998, and to all light trucks manufactured after that period. Further, the requirement must apply to all light trucks, making no distinction between those that are single stage and those that are multi-stage.

NHTSA Response to Petitions for Reconsideration

The actions requested by the petitioners and the agency's responses to those requests are as follows:

1. Ford Petition

(a) Modify Test Criteria to Reduce Test Variability.

Ford stated in its petition that it "continues to be concerned about the unacceptably high variability and unpredictability in dynamic test results." Ford suggested that the variability would be further exacerbated

by the wide range of light truck models. Ford alleged that one cause of variability is electrostatic discharge, which, according to Ford, "can result in much higher HIC readings during dynamic tests conducted on dry winter days than on identical tests conducted on humid summer days." (HIC is an acronym for Head Injury Criterion, and is calculated from readings taken by a triaxial accelerometer mounted in the test dummy's head.) In accordance with this belief, Ford asked for reconsideration of the Standard No. 208 test conditions to eliminate the effects of electrostatic discharge on HIC measurements.

Test data signal anomalies have occasionally been recorded during NHTSA's crash testing. In some of the tests, there were so-called "spikes." A "spike" means a situation in which an apparent force or acceleration is recorded during a crash test, without any explanation for such a force or acceleration occurring at that time or with such magnitude. For example, a spike may consist of the recording of an acceleration of the dummy in a direction that is inconsistent with the direction of the crash forces, a recorded acceleration and deceleration in an impossibly short period of time, a recorded total force of extraordinary magnitude without any corresponding damage to the dummy, and so forth.

NHTSA acknowledges that it is theoretically possible that electrostatic phenomena could play a role in producing spikes in crash tests, especially crash tests of vehicles equipped with air bags. Static electricity can be built up by friction between dissimilar materials. Air bags are made of a fabric material, while the test dummy is clothed in formfitting cotton stretch garments with shoes upon its feet. Either the air bag fabric or the test dummy's clothing or both could contribute to the generation of static electricity under certain conditions during a crash test. However, the agency's acknowledgement that the occurrence of electrostatic discharges is theoretically possible still leaves the agency far from convinced that it should adopt special provisions (such as requiring the test dummy's garments to be grounded to the vehicle structure) to regulate electrostatic discharge during Standard No. 208 compliance tests.

Contrary to Fords's implication, Standard No. 208 currently specifies environmental limits which are to be followed during all compliance crash tests. The stabilized temperature of the test dummy must be between 66° and 78° Fahrenheit when the Hybrid II test dummy is used, and between 69° and 72° Fahrenheit when the Hybrid III test dummy is used. See S8.1.12 of Standard No. 208. These temperature limits apply to the test dummy under all ambient weather conditions. Thus, they are to be followed regardless of whether the crash test is conducted on a 20° day in the winter or a 90° day in the summer.

These temperature limits apparently have adequately controlled environmental effects on crash test results. Various manufacturers and independent test laboratories have conducted crash tests all over the world under a wide variety of environmental conditions. NHTSA is not aware of any information suggesting that spikes, whether from electrostatic discharge or other sources, occur more frequently in winter than in summer. Ford did not provide any information in its petition showing that the spikes it experienced during winter testing were disproportionate to the spikes experienced during summer testing. Thus, NHTSA has no reason to conclude that test variability from electrostatic discharges is a serious problem under the existing test procedures.

Further, even if NHTSA were to accept Ford's allegation about test variability, the existence of such variability would not demonstrate or even imply that electrostatic phenomena are the cause of that variability. Nothing in Ford's petition even purports to demonstrate that electrostatic discharges have ever occurred during a Standard No. 208 crash test. Further, NHTSA is not aware of any such information from any other source. Ford also did not show either how electrostatic discharges would influence HIC measurements, or the magnitude of error that electrostatic discharges would introduce into the HIC. Absent any evidence either in Ford's petition or from other sources about electrostatic discharges being the source of variability in Standard No. 208 compliance tests, Ford's petition is supported only by speculation and theory. Such a basis, absent any supporting data, is not sufficient justification for changing the existing test procedures in Standard No. 208. This portion of Ford's petition is therefore denied.

(b) Technical Amendments

Ford requested three technical amendments to the final rule in its petition for reconsideration. These requests were as follows:

(i) *Vehicle loading during compliance tests.* Ford noted in its petition that, in response to Ford's comments on the NPRM, the final rule revised the vehicle loading for Standard No. 208 testing to make that standard's provisions regarding work-performing accessories on light trucks identical to the corresponding provisions in Standards No. 212 and 219. Those standards exclude the weight of such accessories from unloaded vehicle weight. However, Ford noted that the provisions in Standard No. 208 regarding the proportioning of test load between the axles of the test vehicle (S8.1.1(b)) of Standard No. 208) differed slightly from the load proportioning provisions in Standards No. 212 and 219. Ford asserted that the provisions in Standard No. 208 could be interpreted as specifying different load proportioning for that Standard than is specified in Standards No. 212 and 219, and asked that this language in Standard No. 208 be amended to make it identical to that used in Standards No. 212 and 219.

In response to this petition, NHTSA has carefully reexamined the weight distribution provisions in Standards No. 208, 212, 219, and 301. That reexamination shows that the weight distribution provisions of the four standards are now substantively identical, although Standard No. 208's are abbreviated and simplified. In addition, NHTSA has always interpreted Standard No. 208's weight distribution provisions in the manner suggested by Ford. That is, NHTSA places the test dummies in the vehicle and then distributes the cargo weight in proportion to the assigned gross axle weight ratings. The agency has followed this procedure in all of its crash tests of passenger cars to determine compliance with Standard No. 208, since that allows the single crash test to be used for simultaneous evaluation of Standards No. 208, 212, 219, and 301. A different interpretation would force the agency as well as the manufacturers to conduct repetitive crash testing for no valid purpose.

Therefore, NHTSA has always interpreted the weight distribution provisions in these four safety standards to be the same. In addition, no manufacturer other than Ford has sought an interpretation of the Standard No. 208 weight distribution procedures. Further, all manufacturers, including Ford, have conducted their Standard No. 208 certification tests using the same weight distribution as specified in Standards No. 212, 219, and 301. In other words, the simplified and abbreviated weight distribution provisions in Standard No. 208 have not been perceived as ambiguous by any affected parties prior to Ford's petition, and the weight distribution procedures followed

for Standard No. 208 testing by both vehicle manufacturers and NHTSA have been the same weight distribution procedures followed for testing under Standards No. 212, 219, and 301. Given these circumstances, it is not necessary to amend the weight distribution provisions in Standard No. 208 to ensure that the procedures will be identical to the weight distribution procedures for testing pursuant to Standards No. 212, 219 and 301. Hence, Ford's request is denied.

(ii) *Applicability of phase-in attribution requirements to vehicles manufactured in more than one stage.* During the phase-in of automatic crash protection for light trucks, it is necessary to attribute vehicles with more than one "manufacturer," as that term is defined in the Safety Act, to a single manufacturer for the purposes of calculating compliance with the percentage requirements of the phase-in. To accomplish this purpose, the final rule provided that the same attribution rules would apply to light trucks as were previously applied to passenger cars. That is, the attribution may be decided between the manufacturers in a written contract, a copy of which is filed with the agency. Absent an agreement among the several manufacturers, an imported vehicle will be attributed to the importer and vehicles made in the U.S. by more than one manufacturer will be attributed to the manufacturer that markets the vehicle. See S4.2.5.6 of Standard No. 208.

Ford argued in its petition that the attribution rules could be read to apply to vehicles manufactured in more than one stage, or multistage vehicles, because such vehicles are "produced by more than one manufacturer." To ensure that it was not interpreted in this manner, Ford asked that the attribution rules be amended to expressly state that those rules do not apply to vehicles manufactured in two or more stages.

Ford's requested amendment is unnecessary. Ford apparently did not note that the final rule explicitly provides that multistage vehicles are not subject to the automatic crash protection requirements during the phase-in period. That is, S4.2.5.5(a)(3) of Standard No. 208 provides that any light truck "that is manufactured in two or more stages * * * is not subject to the [phase-in] requirements." This provision applies with respect to all of the light truck phase-in requirements set forth in S4.2.5, including the attribution rules in S4.2.5.6. Thus, since multistage vehicles are excluded from all of the phase-in requirements, it is unnecessary to also specifically exclude such vehicles from each of the individual phase-in requirements.

(iii) *Typographical error in phase-in attribution requirements.* Ford observed that S4.2.5.6.2 of Standard No. 208, which sets forth the phase-in attribution requirements, refers to an attribution under S4.2.5.4.1. Since there is no such section in the final rule, Ford suggested that this reference was a typographical error, and that the intended reference was actually to S4.2.5.6.1. Ford is correct. This notice corrects the typographical error.

2. NTEA Petition

The NTEA petition argued that NHTSA had not shown that the extension of the automatic crash protection requirements to light trucks manufactured in two of more stages "meets the need for motor vehicle safety," as required by the National Traffic and Motor Vehicle Safety Act. In addition, NTEA argued that the automatic crash protection requirements were not practicable for light trucks manufactured in two or more stages and that final stage manufacturers faced particular certification difficulties with automatic crash protection. Finally, NTEA argued that NHTSA had not properly analyzed the negative affects which NTEA believed this rule would have on small businesses. These points are addressed below.

NTEA's arguments draw heavily upon *National Truck Equipment Association* v. *NHTSA*, 919 F.2d 1148, *rehearing denied*, 928 F.2d 739 (6th Cir. 1990), a case in which a divided panel reversed, in part, the extension of Standard No. 204, Steering Control Rearward Displacement, to light trucks. The majority determined that the safety benefits of the standard were "not at all clear" (*id.* at 1154) as applied to multi-stage light trucks because it "found" that these vehicles are driven by "professional drivers" for "short distances" and at "low speeds" on local streets instead of on "highways." Based on that finding, the majority stated that it was "justified" in examining the economic impact of the extension (*ibid.*). The majority accepted NTEA's argument that the amendment provided no means by which final stage manufacturers could demonstrate compliance with Standard No. 204, and it concluded that the standard would destroy the truck customization industry (*id.* at 1154–1155). Accordingly, the majority found that the amendment did not satisfy the statutory requirement that safety standards be "practicable" (*id.* at 1153). Noting that its ruling addressed only the problems faced by final stage manufacturers, the majority invalidated the extension only "to the extent that it applies to vehicles manufactured by final stage manufacturers that cannot pass through the certification of the initial manufacturer" (*id.* at 1158).

As discussed in detail below, the facts and analyses associated with this rulemaking differ significantly from those associated with the 1987 final rule extending Standard No. 204 to light trucks. First and foremost is the existence of a Congressional mandate requiring air bags in light trucks within the specified weight ranges. This statutory mandate in effect ratifies this agency's extension of the automatic crash protection requirements to multistage light trucks, as well as single stage light trucks. Second, the record in this rulemaking resolves the issues of safety need and consumer choice concerns expressed by the panel majority in *NTEA* v. *NHTSA*. For example, the significant and separate contributions of automatic crash protection to vehicle safety have been widely demonstrated, analyzed, and accepted. Third, the agency has initiated rulemaking (56 FR 61395; December 3, 1991) to amend its certification regulations in a manner that would ease the perceived certification burdens on final stage manufacturers. Fourth, significant aspects of NTEA's representations to this agency regarding the Standard No. 208 rulemaking, and similar representations by that organization to the Sixth Circuit regarding the earlier Standard No. 204 rulemaking, can be shown to be unsupported, without merit, or both.

(i) *Safety need.* NTEA argued that NHTSA had not satisfied the statutory criteria that safety standards "meet the need for motor vehicle safety" with respect to "vehicles produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment," because in extending the automatic crash protection requirements to light trucks in general, the agency did not show that this narrow subclass of light trucks has a significant rate of accidents, serious injuries, or fatalities. Absent such a showing, NTEA asserted that NHTSA had not satisfied its obligations under the Safety Act.

As an initial matter, it is instructive to note that implicit in the enactment of the section 2508 of the NHTSA Authorization Act of 1991 is the finding by Congress that requiring the installation of air bags in light trucks, including those light trucks "produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment," will enhance

motor vehicle safety. This supports and ratifies NHTSA's earlier similar conclusion that the installation of automatic restraints, whether air bags or automatic belts, in light trucks, including those light trucks produced in two or more stages and equipped with a cargo or property-carrying body and/or work-related equipment, will enhance motor vehicle safety.

The basis for that earlier agency conclusion is found in the Final Regulatory Impact Analysis for the March 26, 1991 final rule, filed in Docket No. 74–14, Notice 70. It contains a summary of the safety benefits to be expected from extending the automatic crash protection requirements to light trucks. As shown in that analysis, the final rule could prevent 2,000 deaths and lessen the severity of 28,000 serious injuries every year. These estimated benefits are from all types of light trucks within the specified weight categories, including minivans and compact pickups, motor homes, full-size pickups, and some work-related vehicles produced in two or more stages, such as vans, bread delivery trucks, small dump trucks, tow trucks, etc.

NTEA does not dispute the agency's overall estimate of the rule's safety benefits for all light trucks. Instead, NTEA is limiting its comment to the alleged lack of a demonstrated safety benefit in a particular subcategory of light trucks. NTEA seems to be arguing that NHTSA may not aggregate safety data for light trucks of similar size and weight, but must gather separate data for each subclass and demonstrate a separate safety need for each identifiable subclass. The agency disagrees for three reasons. First, it is undesirable from a statistical standpoint to excessively subdivide the regulated vehicle population and the associated safety data for that population. Second, it is inconsistent with the requirements of the Safety Act to base the applicability of safety standards on the circumstances of manufacture, such as whether a vehicle is manufactured in one or more stages. Third, petitioner has presented no data or analysis justifying subdividing light trucks into work-related light trucks and non-work-related light trucks or subdividing work-related light trucks into single stage work-related light trucks and multistage work-related light trucks.

The inappropriateness of NTEA's approach may be seen by considering the implications of applying it to the most familiar type of vehicle safety rulemaking, that concerning passenger cars. If it were so applied, this agency would have to make a separate showing of safety need for sedans, coupes, station wagons, and hatchbacks, and a further separate showing of safety need for each size class of each type of car, e.g., subcompact sedans, compact sedans, mid-size sedans and full size sedans. If the vehicle population were subdivided into increasingly smaller and smaller units, the small data cells available for each unit might not allow any valid statistical conclusions to be drawn for any unit. Thus, if this approach were taken, NHTSA could effectively be prevented from ever issuing any safety standards, because it could not show a safety need for any of these subdivided vehicle classes. Such a result is demonstrably inconsistent with the Safety Act, because it would effectively thwart the Safety Act's stated purpose to increase motor vehicle safety through the establishment and implementation of Federal motor vehicle safety standards.

NTEA goes a step further in the case of light trucks, suggesting that the agency is obliged to subdivide further the existing vehicle categories into vehicles that are manufactured in one stage and vehicles manufactured in two or more stages. Thus, under NTEA's suggested approach, physically similar passenger vans or walk-in vans would be placed in separate subclasses, depending upon whether the vehicle was manufactured by a single manufacturer or in more than one stage.

There are many reasons why this suggestion is not persuasive. Initially, NHTSA notes that the crash data compiled by NHTSA and the States do not differentiate between vehicles on the basis of the number of stages in which the vehicles were manufactured. Instead, the crash data identify the vehicles involved in the crash by means of the vehicle identification number (VIN) assigned to them. The information coded in the VIN does not by itself indicate whether the completed vehicle was manufactured in one or more stages. While it might be possible to amend the VIN requirements so that the VIN by itself would show the number of stages in which a vehicle was manufactured and to change the existing crash data collection to ensure that this information was obtained, such changes would be difficult and costly. NTEA has not set forth any reason to believe that this significant change in the VIN and crash data collection would be worthwhile.

The agency has long interpreted section 103(f) of the Safety Act as contemplating that vehicles are to be grouped within broad categories based on physical differences between groups of vehicles. The different groupings are sometimes defined by specifically identifying the physical differences between vehicles and other times by referring to the uses for which the vehicles have been designed. This interpretation is consistent with Congress' explicit indication that any different application of the safety standards among vehicles should be based upon vehicle attributes. This indication is provided in section 103(f) of the Act, in which Congress directed the agency to consider, in prescribing standards, whether each proposed standard is "reasonable, practicable and appropriate for the *particular type* of motor vehicle or motor vehicle equipment for which it is prescribed." (Emphasis added.) Regarding that provision, the Senate Committee Report on the Safety Act states:

> Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards. Such differences would, of course, be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacturer. S. Rep. No. 1301, 89 Cong., 2d Sess., at 6 (1966).

For the purpose of setting and applying the safety standards to appropriate groups of vehicles, NHTSA has defined the basic vehicle groups in 49 CFR 571.3 in accordance with section 103(f)(3) and the legislative history quoted above. The current vehicle groupings are passenger car, multipurpose passenger vehicle, truck, bus, motorcycle, and trailer.

The agency on occasion has applied safety standards only to some vehicles within one of the groups when it has reason to believe that a distinct subgroup within a broad grouping should not be subject to the same safety standards as the other vehicles in the broad grouping. This subdivision is usually done on the basis of the gross vehicle weight rating or unloaded vehicle weight of vehicles. For instance, the extension of the automatic crash protection requirements applies only to those multipurpose passenger vehicles, buses, and trucks that are below specified weights. This differentiation is based on data showing that occupants of the heavier vehicles are at a lesser risk in the event of a crash. These data follow from the laws of physics pursuant to which the occupants of heavier vehicles striking lighter vehicles generally experience lower decelerations (i.e., crash forces) than do the occupants of the lighter vehicles. Clearly, such a subdivision is based

upon the characteristics of the vehicles in question, instead of on the identity of their manufacturers or the nature of the manufacturing process.

NTEA's request to establish a special class for work-related light trucks manufactured in two or more stages is contrary to the above-cited language in the legislative history precluding NHTSA from reliance on special circumstances of manufacture as a basis for differentiating among vehicles for the purposes of the safety standards. The agency could, however, subdivide the light truck category into (a) light trucks designed for certain specified work-related purposes and (b) all other light trucks, *if* there were some reason to believe that the different design or use of the first category of trucks somehow indicated a sufficiently different level or type of safety need that would warrant applying more or less stringent requirements, or even no standard at all. Stated otherwise, if the record supported it, NHTSA could impose different standards on a particular type of work-related light truck, such as a tow truck or delivery truck, but NHTSA cannot specify that different standards apply to tow trucks or delivery trucks produced in two or more stages than to tow trucks or delivery trucks produced in a single stage. In any event, neither the materials submitted by NTEA nor the rest of the record indicate that work-related light trucks have less of a safety need for automatic crash protection than other types of light trucks.

In assessing NTEA's arguments, NHTSA begins from the premise that a person driving or riding in a vehicle while on the job is entitled to the same level of safety protection as a person who is driving or riding in a vehicle off the job. Accordingly, unless there is some reason to believe that work-related light trucks are substantially less likely to be involved in crashes, the fact that a vehicle is used extensively or even solely for work-related purposes does not of itself suggest there is any lesser safety need to protect the occupants in the event of a crash.

NTEA suggested two reasons for believing that work-related vehicles were safer in use than other comparably sized vehicles. First, NTEA suggested that most commercial vehicles are driven by "professional drivers." Second, NTEA suggested that most commercial vehicles are not used on the "highways," but are primarily used in short distance, low-speed trips.

NTEA's petition did not provide any data to substantiate either of its claims. Likewise, the petitioner did not elaborate upon these assertions or explain why NTEA believes either of them to be correct. This agency does not believe that these unsupported NTEA assertions demonstrate that there is a lesser safety need to provide automatic crash protection for drivers of work-related, multistage light trucks than for drivers of other light trucks.

NTEA's assertion that most work-related, multistage light trucks are driven by "professional drivers" is misleading. Although many of the drivers of these vehicles may be professionals, those persons are not "professional drivers." Their professionalism lies not in driving, but in the areas of their special training and skills, i.e., plumbing, exterminating, repairing, etc. Locksmith trucks are driven by professional locksmiths, electrical repair company trucks are driven by professional electricians, and so forth. No special license or demonstration of skill is required in most jurisdictions to drive commercial light trucks. Hence, NHTSA concludes that there is no reason to believe that drivers of work-related light trucks as a whole have any more driving skill than drivers of other light trucks.

NHTSA does not find the assertion that commercial vehicles are used primarily in short distance, low-speed trips any more persuasive regarding safety need. Even if it were true that work-related, multistage light trucks are less likely than other light trucks to be driven on long trips on freeways, this would not indicate a lesser safety need. Most accidents occur within 25 miles of place of residence or business. Further, many serious accidents occur on roads other than highways. While it is true that a majority of vehicle occupant deaths occur in rural areas, a substantial number (more than 43 percent) occur in urban areas where NTEA suggested many work-related, multistage vehicles are likely to be operated. In the same vein, while a majority of those urban vehicle occupant deaths occur at night, a sizable number (more than 41 percent) occur during daytime hours when most types of work-related, multistage vehicles are also likely to be operating. Thus, there is no safety data to support NTEA's assertion that work-related, multistage vehicles have a lesser safety need for automatic crash protection than other comparable light trucks.

Additionally, the driving situations in which many work-related, multistage light trucks are used suggests a greater, not a lesser, safety need for automatic crash protection. For example, tow trucks, emergency and rescue vehicles, and snow removal vehicles are frequently driven at high speeds, in hazardous situations, and/or in inclement and less safe weather conditions.

In sum, NHTSA reaffirms its previous conclusion that there is no reason to believe that the safety need for automatic crash protection in work-related, multistage light trucks is any less than the safety need for automatic crash protection in other similarly-sized light trucks. Moreover, the overall safety benefits of automatic crash protection are such that, even if work-related, multi-stage light trucks were shown to be somewhat less likely to be involved in accidents than other light trucks, there is no reason to believe that the difference is so substantial that the agency could conclude that extending the automatic crash protection requirements to these vehicles does not "meet the need for motor vehicle safety."

(ii) *Practicability*. NTEA next argued that NHTSA had not shown that applying the automatic crash protection requirements to light trucks manufactured in two or more stages was "practicable," as required by section 103 of the Safety Act (15 U.S.C. 1923). In the preamble to the final rule, NHTSA explained:

> Very few (if any) final stage manufacturers have the engineering and financial resources necessary to independently determine whether a completed vehicle complies with a complex safety standard such as Standard No. 208. Thus, as a practicable matter, NHTSA anticipates that most, if not all, final stage manufacturers will have to complete their vehicles within specifications established by an incomplete vehicle manufacturer, and, in most cases, they will have to use chassis-cabs. 56 FR 12472, at 12478; March 26, 1991.

In its petition for reconsideration, NTEA argued that this statement demonstrated that the rule was not practicable for final stage manufacturers, because the only way in which NHTSA had suggested final stage manufacturers could comply was to remain within the specifications established by the incomplete vehicle manufacturer. Specifically, NTEA stated that "vehicles exist that cannot always be completed to the end user's satisfaction within the guidelines established by the incomplete vehicle manufacturer to allow for passing through the incomplete vehicle manufacturer's certification. The NTEA expects this rulemaking will increase the number of such vehicles."

The House Committee Report on the Safety Act included the following explanation of the meaning of the term "practicable" in the Safety Act:

In establishing standards, [NHTSA] must conform to the requirement that the standard be practicable. This would require consideration of all relevant factors, including technological ability to achieve the goal of a particular standard as well as consideration of economic factors. H. Rep. No. 1776, 89th Cong., 2d Sess., at 16 (1966).

Following this legislative guidance, NHTSA must consider practicability from two different perspectives, one technical and the other economic. First, for a standard, to be practicable, it must be technically possible for the affected manufacturers to achieve compliance within the specified time limits. In the case of this rule, NHTSA has concluded that it will be technically possible for final stage manufacturers to comply with the automatic crash protection requirement in their light trucks on or before by September 1, 1997.

This conclusion is based upon the fact that NHTSA's regulations provide final stage manufacturers with a technologically feasible means of assuring that their vehicles comply with the automatic crash protection requirements. Specifically, 49 CFR Part 568 requires incomplete vehicle manufacturers to provide specifications along with their incomplete vehicles. Part 568 also provides that completion of an incomplete vehicle in accordance with the specifications set forth in the incomplete vehicle document will ensure conformity with applicable standards and provide the final stage manufacturer with a basis for certifying its completed vehicles. See 49 CFR § 568.4(a)(7) (i) and (ii). Incomplete vehicle manufacturers need not provide specifications for their incomplete vehicles only if conformity with the particular standard is "not substantially affected by the design of the incomplete vehicle." See 49 CFR 568.4(a)(7)(iii). If the incomplete vehicles used by the final stage manufacturers do not provide specifications for completing them in conformity with applicable standards, the final stage manufacturers will have to use different incomplete vehicles, that provide the needed specifications, from which to complete their vehicles.

When examining technical feasibility of new requirements in the safety standards, the issue under the Safety Act is not whether final stage manufacturers can comply with the automatic crash protection or other new requirements without making any changes to their existing practices. Instead, the issue is whether it is practicable for final stage manufacturers to make changes to their practices so that they can assure that their completed vehicles will comply with the requirements.

In this case, final stage manufacturers may need to make some changes in the selection of the incomplete vehicle from which the completed vehicle will be built and may need to make some modifications in how they complete the vehicle, go as to ensure that the vehicle will be completed in accordance with the specifications provided in the incomplete vehicle document. However, those changes and modifications will not pose any special technical problems for final stage manufacturers. Accordingly, NHTSA reaffirms its previous conclusion that it is technically possible for final stage manufacturers to comply with the automatic crash protection requirements by completing their vehicles within the specifications established by the incomplete vehicle manufacturer, and basing the certification of the completed vehicle upon the incomplete vehicle manufacturer's specifications.

The second prong of the "practicability" requirement relates to whether a standard's economic impacts are reasonable. That is, NHTSA must consider whether the costs and other economic impacts associated with the rule are excessive. In the final rule, NHTSA concluded that this amendment would not impose an unreasonable economic burden on final stage manufacturers. NTEA has not provided any information that would lead the agency to change this conclusion.

It is true that in the interest of safety, final stage manufacturers may on occasion have to use a different incomplete vehicle from the one initially specified by a customer in order to make all of the modifications desired by the customer. Conversely, in some cases final stage manufacturers will not be able to make all of the modifications desired by a customer who decides not to change the initial selection of an incomplete vehicle. This does *not*, however, show that the economic impacts of the automatic crash protection requirement are unreasonable for final stage manufacturers. All safety standards impose limits on how a manufacturer can design and manufacture its vehicles and on what vehicles consumers can purchase.

For example, it would certainly cost less to manufacture large trucks if vehicle manufacturers could place their smallest, least expensive brake systems on their largest trucks. However, vehicles with inadequate braking capabilities would pose an unreasonable safety risk on the public roads. Thus, manufacturers of large trucks must instead use larger and more expensive brake systems on these trucks, and consumers must pay a higher price that reflects the added cost to the manufacturer of using a braking system with adequate stopping capabilities, even if some customers would have preferred a less effective system. The greater expense that arises from not permitting manufacturers to equip their vehicles with whatever braking system the customer wants or with the least expensive braking system does not show that the requirement for adequate braking capabilities imposes unreasonable economic burdens.

Thus, the proper inquiry is not simply whether it might cost final stage manufacturers more to manufacture their vehicles if they are subject to the automatic crash protection requirement. Neither is it dispositive that final stage manufacturers may not be able to provide the precise version of the type of vehicle their customers desire. It probably will cost final stage manufacturers more to ensure that their vehicles comply with the automatic crash protection requirements. However, this "burden" is fully justified by the improvement in motor vehicle safety associated with this rule. Moreover, the "burden" is a manageable one.

After considering the economic aspects of a practicability determination, NHTSA reaffirms its previous conclusion that the extension of the automatic crash protection requirements to light trucks, including those manufactured in two or more stages, is practicable. It will not impose a significant economic burden on final stage manufacturers to examine the features requested by a customer and determine whether modifications to incorporate those features can be made within the envelope established by the incomplete vehicle manufacturer for a particular incomplete vehicle. Further, there is no reason to believe that the increased costs to purchasers of multistage vehicles that comply with the automatic crash protection requirements would be substantially different from the increased costs to purchasers of single stage light trucks that comply with those requirements. In the Final Regulatory Impact Analysis prepared for the final rule, NHTSA estimated that compliance with the automatic crash protection requirements could add $464 (in 1989 dollars) to the cost of a light truck.

(iii) *Consumer choice*. NTEA also argues that the final rule would restrict consumer choice to an extent inconsistent with section 103(f)(3) of the Safety Act and its legislative history. That section provides that, in prescribing safety standards, NHTSA

shall consider whether the standards are "appropriate for the particular type of motor vehicle for which it is prescribed." The Senate Report explaining this section provides:

In determining whether any proposed standard is "appropriate" for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, the committee intends that the Secretary will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards.

NHTSA agrees that this language requires the agency to consider whether its standards would impose unreasonable restrictions on consumer choice. The agency recognizes that the extension of the automatic restraint requirements will narrow consumer choice to the extent that consumers who would prefer a multistage light truck that is not certified as providing automatic crash protection will not have that option. It will also narrow consumer choice to the extent the consumers and final stage manufacturers must, in deference to interests of motor vehicle safety, be more careful in selection of incomplete vehicles to be incorporated into multistage light trucks. Further, some design or styling changes might have to be made. However, these are not the sorts of restriction on consumer choice that is prohibited by the Safety Act.

The actual extent of section 103(f)(3)'s protection of consumer choice is revealed in the test that the section's legislative history sets forth regarding the appropriateness of a standard. The proper test is whether a given standard would eliminate a type of vehicle, such as convertibles or tow trucks. In this case, no information, including the petitioner's arguments, suggests that the extension to light trucks of Standard No. 208's automatic crash protection requirements fails this test.

Petitioner has not argued, much less demonstrated, that the extension of the automatic crash protection requirements would eliminate some particular type of vehicle, e.g., a tow truck, delivery truck, or utility truck. Petitioner has also not suggested that the extension would eliminate or have a substantial adverse effect on key distinguishing attributes of those vehicles. That is, petitioner has made no showing that purchasers will not be able to find chassis types and models that are compatible with desired work-related features, or, conversely, to obtain work-related features or devices that are compatible with a desired chassis. Instead, the petitioner made a much more limited argument, i.e., petitioner argued that this amendment will narrow the range of choice which a vehicle purchaser has in selecting among various chassis models and/or modifications to these chassis.

The fact that the extension of automatic crash protection requirements to light trucks will preclude consumers from buying light trucks without automatic crash protection does not suggest that the extension is inappropriate. Any safety standard or other regulation imposes restrictions on consumer choice. Moreover, those restrictions often make it necessary for the consumer to pay more for a vehicle than otherwise. For example, cars would be simpler and less expensive to produce or purchase if they were produced without any safety belts or other occupant protection, without side door beams, without a fuel system designed to withstand a 30 mph crash, and without a padded dashboard. However, such a car would not comply with Standards No. 201, 208, 214, and 301, and would not meet the goals of the Safety Act that vehicles be made safer.

Some consumers might wish to purchase such a new car without these safety features, in part because they could pay less for such a vehicle. However, the Safety Act does not permit consumers that option. Instead, section 108 of the Safety Act (15 U.S.C. 1397) expressly prohibits the manufacture, sale, or introduction into commerce of new vehicles that do not conform with all applicable safety standards. To this extent, the Safety Act consciously limits consumer choice in order to assure an appropriate level of safety. Thus, it is not a telling point to assert simply that a new requirement in a safety standard will limit consumer choice. Even if true, such an assertion by itself does not even suggest, much less demonstrate, that the new requirement is outside the authority granted in the Safety Act.

There is also no suggestion in either section 103(f)(3) or its legislative history of there being any right on the part of a manufacturer or a consumer to produce a particular type of light truck through mixing and matching incomplete vehicles and vehicle modifications packages without due regard for safety. As explained at length above, this is not the sort of consumer "choice" that Congress sought to protect in section 103(f)(3).

(iv) *Certification difficulties.* NTEA next argued that the automatic crash protection requirements would result in serious certification problems for final stage manufacturers. NHTSA does not agree that this rule will impose any significant additional certification problems for final stage manufacturers. 49 CFR § 568.4(a)(7) currently requires incomplete vehicle manufacturers to make one of three statements regarding the compliance of their incomplete vehicles with the automatic crash protection requirements. (Part 568 sets forth the agency's regulations regarding certification of vehicles manufactured in two or more stages). These are:

(1) The vehicle will conform to the automatic crash protection requirements if no alterations are made in identified components of the incomplete vehicle (§ 568.4(a)(7)(i));

(2) The vehicle will conform to the automatic crash protection requirements if specific conditions of final manufacture are followed (§ 568.4(a)(7)(ii)); or

(3) Conformity with the automatic crash protection requirements is not substantially affected by the design of the imcomplete vehicle and the incomplete manufacturer makes no representation as to conformity with the standard (§ 568.4(a)(7)(iii)).

The effect of this regulation is to ensure that final stage manufacturers will have a basis for certifying compliance with the automatic crash protection requirements. However, final stage manufacturers will not be able to use incomplete vehicles for which the incomplete vehicle manufacturer has made the third statement above with respect to the automatic crash protection requirements. When final stage manufacturers choose an incomplete vehicle for which the incomplete vehicle manufacturer has made either of the first two statements above, completion of that incomplete vehicle in accordance with the incomplete vehicle manufacturer's specifications provides the final stage manufacturer with a basis for certifying the compliance of the completed vehicle. This allows final stage manufacturers to certify compliance with the automatic crash protection requirements and any other applicable standards without *any* independent testing, analysis, etc., as long as they stay within the guidelines provided by the incomplete vehicle manufacturers.

The experience of final stage manufacturers in certifying compliance with the dynamic testing requirements in Standard No. 208 for manual belts in light trucks, which went into effect on September 1, 1991, is instructive in considering the practicability of implementing the automatic crash protection requirements. The dynamic

testing requirements represented the first time that multistage vehicles were subject to crash testing requirements where compliance was determined using injury criteria and test dummies. Just as is the case with automatic crash protection, few (if any) final stage manufacturers had the engineering and financial resources necessary to independently determine whether a completed vehicle complies with these dynamic testing requirements. Thus, the simplest, if not the only, practicable way for final stage manufacturers to certify compliance with the dynamic testing requirements was to complete the vehicles in accordance with the specifications established by the incomplete vehicle manufacturer.

The final stage manufacturers represented by the Recreation Vehicle Industry Association (RVIA) were concerned about meeting those requirements. These final stage manufacturers believed it was essential to their business that their van conversions include custom seats at the front outboard seating positions. They were also concerned that the incomplete vehicle manufacturers would establish specifications for the incomplete vehicles that would preclude final stage manufacturers from installing custom seats at front outboard seating positions satellites. If the incomplete vehicle manufacturers were to do so, these van converters feared they would lose a substantial portion of their business.

To ensure that the incomplete vehicle manufacturers established specifications that took into account the need of the final stage manufacturers to install custom seats, the final stage manufacturers acted cooperatively with each other and through the trade association RVIA. The final stage manufacturers met with Chrysler, Ford, and General Motors to explain their concerns about the forthcoming incomplete vehicle specifications.

As a result of this communication and cooperation, Chrysler, Ford, and General Motors each established incomplete vehicle specifications that allowed the installation of custom seats by final stage manufacturers, subject to some limitations. To wit, Chrysler established a design envelope on which final stage manufacturers can rely on in certifying compliance with the dynamic testing requirements if the final stage manufacturers use custom seats that are within that envelope. Ford's incomplete vehicle specifications provide that final stage manufacturers must use the Ford-installed risers, seat cushions, and so forth, but allow the final stage manufacturer to change the seat back. General Motors allows converters to build generic versions of GM seats.

Although all three of these incomplete vehicle manufacturers set forth different limits in their incomplete vehicle specifications, all three sets of specifications allowed final stage manufacturers to continue installing custom seats as part of a van conversion. Thus, final stage manufacturers have been able to continue to produce van conversions with custom seats, while the public receives the safety benefits of van conversions certified as complying with the dynamic testing requirements for manual belts. This same sort of communication and cooperative effort by the incomplete vehicle manufacturers and final stage manufacturers will allow final stage manufacturers to certify that their vehicles comply with the automatic crash protection requirements beginning September 1, 1997.

In addition, the agency has proposed amendments to its certification regulations (49 CFR parts 567 and 568) that address some of the concerns NTEA raised regarding certification in its petition. In *NTEA* v. *NHTSA*, the majority held that the extension of Standard No. 204 was not practicable as it related to multistage vehicles for which there is not an incomplete vehicle manufacturer certification which the final stage manufacturer can pass through. After noting that NHTSA's regulations do not permit final stage manufacturers that use incomplete vehicles other than chassis-cabs to pass through a certification made by the incomplete vehicle manufacturer, the court observed that it could see no reason why the certification requirements for those incomplete vehicles that are chassis-cabs should differ from those for other incomplete vehicles. In response to these statements by the court, NHTSA issued a notice proposing to extend the existing requirements for certification of chassis-cabs to all incomplete vehicles. (56 FR 61392; December 3, 1991).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this response to the petitions for reconsideration and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because it simply corrects a typographical error in the final rule without making any other changes to the previously published final rule.

NHTSA prepared a Final Regulatory Impact Analysis for the final rule extending the automatic crash protection requirements to light trucks. That document provides a detailed look at the benefits and burdens associated with the rulemaking action. Those persons interested in that document will find it in NHTSA Docket No. 74–14; Notice 70, and may obtain copies of it by writing to: Docket Section, NHTSA, room 5109, 400 Seventh Street SW., Washington, DC 20590.

Regulatory Flexibility Act

NHTSA has analyzed the effects of this response on small entities, in accordance with the Regulatory Flexibility Act. I hereby certify that this response will not have a significant economic impact on a substantial number of small entities. The only change this notice makes to the previously published final rule is a correction of a typographical error. Thus, this response will not have any effects other than those that were considered in the final rule.

Executive Order 12612 (Federalism)

This response to petitions for reconsideration has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this response will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has also analyzed this response for the purposes of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 is amended by revising S4.2.5.6.2 to read as follows.

S4.2.5.6.2 A truck, bus, or multipurpose passenger vehicle with, GVWR of 8,500 pounds or less and an

unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified in an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.2.5.6.1 of this standard.

* * * * *

Issued on June 8, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-13890 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206-AE22

Pay Rates and Systems (General); Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the decision of the U.S. District Court for the District of Columbia (*National Treasury Employees Union* v. *Newman*, Number 83–0279 (D.D.C., June 28, 1991)), in which the court ordered OPM to promulgate a conversion rule for adjusting the pay schedules of employees paid special salary rates as required by 5 U.S.C. 5305(f) and as consistent with the guidelines set forth in the decision. These proposed regulations amend a relevant portion of the interim regulations issued by OPM on May 3, 1991 (56 FR 20334), which have not yet been made final.

DATES: Comments must be received on or before August 14, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, room 6H30, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On June 28, 1991, the U.S. District Court for the District of Columbia issued a decision, cited above, affecting the manner in which the pay schedules of certain Federal employees paid special salary rates shall be adjusted in anticipation of salary adjustments made in the relevant underlying statutory pay schedules. The court concluded that OPM must consider the following factors when formulating the appropriate "conversion rule" for adjusting the pay schedules of special salary rate employees:

(1) OPM must take into consideration the former non-special pay rate of the special rate employee to avoid any action that would allow the salary of a special salary rate employee to fall below the salary that employee would have received if still a non-special rate employee.

(2) The starting point for making any adjustment shall be the statutory increase given to non-special rate employees. The reasoning behind this step is that the factors leading to a statutory increase in pay will most likely affect the special rate employee as well.

(3) OPM should then review the special pay rate in a given occupation and location to determine whether an adjustment is necessary to recruit and retain special rate employees. (It may be that such a review was undertaken prior to the date of the statutory pay increase.) Such a review may lead to a determination, taking into consideration such matters as special rate pay adjustments that year or in previous years, that no increase is necessary for the special rate employees, notwithstanding that there is a statutory increase for non-special rate employees, or that an increase that is greater than the statutory increase is necessary for the special rate employees in order to recruit and retain such employees in the involved occupation and location.

(4) OPM will make such adjustment based on the requirements of 5 U.S.C. 5305, not for mechanical reasons or for the purpose of automatic adjustments.

In view of the court's decision, interim regulation 5 CFR 530.307(a) is being rescinded (refer to a final rule elsewhere in today's **Federal Register**) because it contains an automatic adjustment mechanism that the court concluded would not be proper. In addition, OPM proposes to amend interim regulation 5 CFR 530.304, providing for an annual review of special salary rate schedules, in order to have it conform with the court's criteria. Proposed regulation 5 CFR 530.304 requires OPM to conduct a review of existing special salary rate schedules prior to the effective date of an adjustment in the scheduled rates of pay, or at least annually, to determine the extent to which that adjustment shall apply to the special rate schedules. The criteria OPM considers include giving full consideration to the court's guidelines in conjunction with the factors that appear in 5 CFR 530.303 of the interim regulations. In accordance with the changes made in 5 CFR 530.304, necessary revisions have also been made in 5 CFR 530.307.

Equal Opportunity 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Equal Opportunity 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend 5 CFR part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for 5 CFR part 530 continues to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748, 56 FR 4521.

2. Section 530.304 is revised to read as follows:

§ 530.304 Annual review.

(a) Prior to an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, but at least annually, OPM shall review special salary rate schedules to determine whether the factors in § 530.303 of this part and paragraph (b) of this section require those schedules to continue, and, if they are to continue, the extent to which they are to be adjusted, if at all.

(b) In addition to the factors in § 530.303 of this part, OPM shall consider, for the purpose of making the determination required by paragraph (a) of this section—

(1) The former non-special pay rates of the special rate employees to ensure

that any adjustment in the special rates of pay would not cause those rates to fall below the non-special rates of pay to which the special rate employees would otherwise have been entitled;

(2) The likelihood that the factors leading to a statutory adjustment in pay will affect special rate employees, as well; and

(3) Other special rate pay adjustments that occurred prior to the date of the anticipated statutory pay adjustment.

(c) Any adjustment in the special rates of pay shall be based on the factors in paragraphs (a) and (b) of this section and shall not be made solely for mechanical reasons or for the purpose of providing automatic adjustments. Any adjustment must be based on the pay OPM determines is necessary in a given occupation and area to recruit and retain the special rate employees.

(d) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(e) When special rates are adjusted as a result of this review, an employee's pay shall be fixed in the same manner as provided in § 530.307 of this part.

3. § 530.307 is revised to read as follows:

§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under § 530.304 of this part for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(b) If a special rate range is terminated under § 530.304 of this part, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date.

(c) In the case of an employee in a position under the Performance Management and Recognition System who was receiving a special pay rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date a rate of basic pay determined under § 540.106 of this chapter.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 88-143-1]

RIN 0579-AA12

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world, and to allow seven kinds of currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. A limited number of the fruits and vegetables would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, would be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: Consideration will be given only to comments received on or before July 30, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-143. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-3249.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

We are proposing to revise the regulations by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

We are also proposing to revise the regulations to allow seven currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. These fruits and vegetables are avocado, grapefruit, lemon, and sweet orange from Bermuda, snow pea from Colombia, cucurbits from Grenada, and globe artichoke from Guatemala. The importaion of avocado, grapefruit, and sweet orange from Bermuda has been prohibited unless the fruit has been treated for the Mediterranean fruit fly. However, we have determined that this pest has been eradicated from Bermuda. (The European Plant Protection Organization Reporting Service, citing Hildurn, D., Dow, R.L. (1990), Mediterranean fruit fly, *Ceratitis capitata*, eradicated from Bermuda. Florida Entomologist 73, 342-343.) Therefore, it no longer appears necessary to require that avocado, grapefruit, or sweet orange imported

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[1] Information on these pest risk assessments and any other pest risk assessment referred to in this document may be obtained by writing to the Administrator, c/o the Biological Assessment and Taxonomic Support Staff, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

into the United States from Bermuda be treated for the Mediterranean fruit fly.

Lemon from Bermuda, snow pea from Colombia, cucurbits from Grenada, and globe artichoke from Guatemala have been allowed importation only through North Atlantic ports of arrival. The restriction to North Atlantic ports of arrival came about because the original requests to the Animal and Plant Health Inspection Service (APHIS) to approve the commodities for importation asked for importation through North Atlantic ports only. The continued restriction to North Atlantic ports does not appear to be warranted because pest risk evaluations have shown that the commodities are not attacked in these countries by any foreign plant pests of concern that would not be readily detectable by inspection.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. Section 319.56–6 also provides that shipments of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

A limited number of the fruits and vegetables proposed for importation would be required to undergo mandatory treatment for fruit flies or other insect pests as a condition of entry, or to meet other special conditions.

The proposed conditions for entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival

The following freuits and vegetables would be allowed entry into the United States in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country	Common name	Botanical name	Plant part(s)
Argentina	Endive	*Cichorium endivia*	Leaf and stem.
Barbados	Banana	*Musa* spp	Flower.
Belgium	Pepper	*Capsicum* spp	Fruit.
Bermuda	Avocado	*Persea americana*	Fruit.
	Carambola	*Averrhoa carambola*	Fruit.
	Grapefruit	*Citrus paradisi*	Fruit.
	Guava	*Psidium guajava*	Fruit.
	Lemon	*Citrus limon*	Fruit.
	Longan	*Dimocarpus longan*	Fruit.
	Loquat	*Eriobotrya japonica*	Fruit.
	Natal plum	*Carissa macrocarpa*	Fruit.
	Orange, sour	*Citrus aurantium*	Fruit.
	Orange, sweet	*Citrus sinensis*	Fruit.
	Passion fruit	*Passiflora* spp	Fruit.
	Suriname cherry	*Eugenia uniflora*	Fruit.
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.
Cook Islands	Banana	*Musa* spp	Green fruit.[2]
	Cucumber	*Cucumis sativus*	Fruit.
	Drumstick	*Moringa pterygosperma*	Leaf.
	Indian mulberry	*Morinda citrifolia*	Leaf.
Costa Rica	Basil	*Ocimum* spp	Whole plant.
	Chinese kale	*Brassica alboglabra*	Leaf and stem.
	Chinese turnip	*Raphanus sativus*	Root.
Dominica	Durian	*Durio zibethinus*	Fruit.
Great Britain	Basil	*Ocimum* spp	Leaf and stem.
Grenada	Abiu	*Pouteria caimito*	Fruit.
	Bilimbi	*Averrhoa bilimbi*	Fruit.
	Breadnut	*Brosimum alicastrum*	Fruit.
	Cocoplum	*Chrysobalanus icaco*	Fruit.
	Cucurbits	Cucurbitaceae	Fruit.
	Durian	*Durio zibethinus*	Fruit.
	Jackfruit	*Artocarpus heterophyllus*	Fruit.
	Jambolan	*Syzygium cumini*	Fruit.
	Jujube	*Ziziphus* spp	Fruit.
	Langsat	*Lansium domesticum*	Fruit.
	Litchi	*Litchi chinensis*	Fruit.
	Malay apple	*Syzygium malaccense*	Fruit.
	Mammee apple	*Mammea americana*	Fruit.
	Peach palm	*Bactris gasipaes*	Fruit.
	Piper	*Piper* spp	Fruit.
	Pulasan	*Nephelium ramboutan-ake*	Fruit.
	Rambutan	*Nephelium lappaceum*	Fruit.
	Rose apple	*Syzygium jambos*	Fruit.
	Santol	*Sandoricum koetjape*	Fruit.
	Sapote	*Pouteria sapota*	Fruit.
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.
	Eggplant	*Solanum melongena*	Fruit.
	Loroco	*Fernaldia* spp	Above ground parts.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemisia dracunculus*	Leaf and stem.
	Yam bean	*Pachyrhizus tuberosus* or *P. erosus*	Root.

Country	Common name	Botanical name	Plant part(s)
Haiti [3]	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Honduras	Banana	*Musa* spp	Flower.
	Chicory	*Cichorium* spp	Leaf and stem.
	Radish	*Raphanus sativus*	Below ground parts.
Israel	Garden rocket	*Eruca sativa*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Jamaica	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Japan	Mung bean	*Vigna radiata*	Seed sprout.
	Soybean	*Glycine max*	Seed sprout.
Korea	Bonnet bellflower	*Codonopsis lanceolata*	Root.
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.
	Mugwort	*Artemisia vulgaris*	Leaf and stem.
	Onion	*Allium cepa*	Bulb.
	Shepherd's purse	*Capsella bursa-pastoris*	Leaf and stem.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Liberia	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Mexico	Anise	*Pimpinella anisum*	Leaf and stem.
	Banana	*Musa* spp	Flower.
	Cucurbits	Cucurbitaceae	Inflorescence.
	Garden rocket	*Eruca sativa*	Leaf and stem.
	Piper	*Piper* spp	Leaf and stem.
	Porophyllum	*Porophyllum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Thyme	*Thymus vulgaris*	Above ground parts.
New Zealand	Fig	*Ficus carica*	Fruit.
Panama	Basil	*Ocimum* spp	Above ground parts.
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus*	Seed.
	Chervil	*Anthriscus cerefolium*	Above ground parts.
	Eggplant	*Solanum melongena*	Fruit.
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemesia dracunculus*	Leaf and stem.
Peru	Basil	*Ocimum* spp	Leaf and stem.
	Dill	*Anethum graveolens*	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Parsley	*Petroselinum crispum*	Leaf and stem.
	Radicchio	*Cichorium* spp	Leaf.
	Thyme	*Thymus vulgaris*	Above ground parts.
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.
	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.
	Black palm nut	*Astrocaryum* spp	Fruit.
	Jessamine	*Cestrum latifolium*	Leaf and stem.
	Malabar spinach	*Bassella alba*	Leaf and stem.
	Mung bean	*Vigna radiata*	Seed sprout.
	Pak choi	*Brassica chinensis*	Leaf and stem.
Sweden	Dill	*Anethum graveolens*	Above ground parts.
Taiwan	Wasabi (Japanese horseradish)	*Wasabia japonica*	Root and stem.
Thailand	Dasheen	*Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp	Leaf and stem.
Tonga	Burdock	*Arctium lappa*	Root, stem and leaf.
Trinidad	Leren	*Calathea allouia*	Tuber.

[2] The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or are yellow but firm.

[3] Executive Order 12779 of October 28, 1991 (56 FR 55975–55976, published October 30, 1991), prohibits the importation into the United States of any goods of Haitian origin, other than publications and other informational materials, or of services performed in Haiti. Importation of any Haitian produce would not be allowed as long as this Executive Order is in effect.

Pest risk analyses conducted by the agency have determined that these fruits and vegetables are not attacked by either fruit flies or other injurious plant pests in the countries listed, either because they are not hosts to these pests or because these pests are not present in the country of origin. In addition, we have determined that any other injurious plant pests that might be carried by the fruits or vegetables would be readily detectable by a U.S. Department of Agriculture inspector. Therefore, the provisions in § 319.56–6 concerning inspection and treatment upon arrival appear adequate to prevent the introduction of injurious plant pests by these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival: Restricted Destinations

After cotton, okra (*Abelmoschus esculentus*) is probably the preferred host of the pink bollworm (*Pectinophora gossypiella* (Saunders)), which is known to occur in Mexico, the West Indies, South America, and limited areas of the United States. Pink bollworm can cause extensive damage to cotton by feeding inside the squares and bolls. Under the current regulations at § 319.56–2p, okra may be imported into the United States without treatment for the pink bollworm only if the okra is entered into the United States through a North Atlantic port with approved treatment facilities, and is destined to Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York,

North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, or the District of Columbia, or any part of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel.

We propose to allow okra produced in the South American country of Suriname to be moved into Alabama, Arkansas, Florida, Georgia, Louisiana, Mississipppi, Nevada, North Carolina, South Carolina, Tennessee, and any part of Illinois, Kentucky, Missouri, and Virginia south of the 38th parallel, without treatment for the pink bollworm, except during May 16 through November 30, inclusive. We also propose to allow okra produced in Suriname to be moved into California without treatment for the pink bollworm, except during March 16 through December 31, inclusive. Based on the growing season of pink bollworm host plants in the southeastern States and Nevada, we have determined that these States do not have the host material necessary to sustain an infestation of the pink bollworm except during May 16 through November 30, inclusive. Based on the somewhat longer growing season of host plants in California, we have determined that California does not have the host material necessary to sustain an infestation of the pink bollworm except during March 16 through December 31, inclusive. Treatment of the okra for the pink bollworm does not appear necessary during times when host material is not available because the pest would not survive if introduced during the specified time periods.

We also propose to allow okra produced in Suriname to be moved into Arizona, New Mexico, Oklahoma, and Texas without treatment for the pink bollworm during any time of the year. The pink bollworm is firmly established in Arizona, New Mexico, Oklahoma, and Texas, which are part of the Cotton Belt. These States are under Federal guarantine to prevent the spread of the pink bollworm into noninfested areas of the United States. Under these circumstances, the pink bollworm would present no new pest risk, during any time of the year, if it were carried into these States in okra from Suriname.

Pest risk analyses conducted by APHIS have determined that okra from Suriname is not attached by fruit flies or certain other injurious plant pests, either because it is not a host to these pests or because these pests are not present in Suriname. In addition, we have determined that any other injurious plant pests that might be carried by the okra would be readily detectable by a U.S. Department of Agriculture inspector. Therefore, the provisions in § 319.566 concerning inspection and treatment upon arrival appear adequate to prevent the introduction of injurious plant pests by the okra.

Treatment Required

The fruits and vegetables listed below are attached by the Mediterranean fruit fly or other injurious insects, as specified below, in their country of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables can be treated to destroy the insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified portions of the United States, only if they have been treated in accordance with the PPQ Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

Country	Common name	Botanical name	Plant part(s)
Greece	Kiwi	*Actinidia deliciosa*	fruit
(1) Cold treatment as follows for the Mediterranean fruit fly: 10 days at 0°C (32°F) or below. 11 days at 0.55°C (33°F) or below. 12 days at 1.11°C (34°F) or below. 14 days at 1.66°C (35°F) or below. 16 days at 2.22°C (36°F) or below. (Pulp must be at or below the indicated temperature at time of beginning treatment) or (2) Fumigation plus refrigeration as follows for the Mediterranean fruit fly: *Fumigation:* With methl bromide at NAP—chamber of tarpaulin: 32 b/m ^{3} (2 lb/1000 ft ^{3}) at 21°C (70°F) or above, with minimum gas concentration of 18g (oz) at 2 hours after fumigation begins. *Refrigeration:* For 4 days at 0.55°-0.7°C (33°-37°F); or for 11 days at 3.33°-8.3°C (38°-47°F). (Fruit must be aerated at least 2 hours following fumigation. Cooling must begin not less than 24 hours after fumigation is completed).			
Greece	Tangerine	*Citrus reticulata*	fruit
	Treatment for the Mediterranean fruit fly as set forth above for kiwi from Greece: (1) cold treatment or (2) fumigation plus refrigeration.		
Israel	Loquat	*Eriobotrya japonica*	fruit
	Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from Greece.		
Jordan	Apple	*Malus domestica*	fruit
	Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.		
	Persimmon	*Diospyros* spp.	fruit
	Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.		
Lebanon	Apple	*Malus domestica*	fruit
	Cold treatment for the Mediterranean fruit fly as set forth above for kiwi from greece.		
Panama	Bean, green and lima.	*Phaseolus vulgaris* and *P. lunatus*	pod

—Continued

Country	Common name	Botanical name	Plant part(s)
Treatment for pod-boring insects as follows:			
(1) Fumigation with methyl bromide at NAP—chamber or tarpaulin:			
24 g/m^3 (1-½ lb/1000 ft^3) for 2 hours at 26.5°C-31.5°C (80°-89°F), with minimum gas concentration as follows:			
19 g (oz) at ½ hour after fumigation begins.			
14 g (oz) at 2 hours after fumigation begins.			
32 g/m^3 (2 lb/1000 ft^3) for 2 hours at 21°C-26°C (70°-79°F), with minimum gas concentration as follows:			
26 g (oz) at ½ hour after fumigation begins.			
19 g (oz) at 2 hours after fumigation begins.			
40 g/m^3 (2-½ lb/1000 ft^3) for 2 hours at 15.5°C-20.5°C (60°-69°F), with minimum gas concentration as follows:			
32 g (oz) at ½ hour after fumigation begins.			
24 g (oz) at 2 hours after fumigation begins.			
48 g/m^3 (3 lb/1000 ft^3) for 2 hours at 10°C-15°C (50°-59°F), with minimum gas concentration as follows:			
38 g (oz) at ½ hour after fumigation begins.			
29 g (oz) at 2 hours after fumigation begins.			
56 g/m^3 (3-½ lb/1000 ft^3) for 2 hours at 4.5°C-9.5°C (40°-49°F), with minimum gas concentration as follows:			
48 g (oz) at ½ hour after fumigation begins.			
38 g (oz) at 2 hours after fumigation begins or			
(2) Fumigation with methyl bromide in 381 mm (15 inch) vacuum:			
8 g/m^3 (½ lb/1000 ft^3) for 1½ hours at 32°-35.5°C (90°-96°F).			
16 g/m^3 (1 lb/1000 ft^3) for 1½ hours at 26.5°-31.5°C (80°-89°F).			
24 g/m^3 (1-½ lb/1000 ft^3) for 1½ hours at 21°-26°C (70°-70°F).			
32 g/m^3 (2 lb/1000 ft^3) for 1½ hours at 15.5°-20.5°C (60°-69°F).			
40 g/m^3 (2-½ lb/1000 ft^3) for 1½ hours at 10°-15°C (50°-59°F).			
48 g/m^3 (3 lb/1000 ft^3) for 1½ hours at 4.5°-9.5°C (40°-49°F).			
Taiwan	Mango	*Mangifera indica*	fruit
Treatment for the Oriental fruit fly (*Bactrocera dorsalis*) as follows:			
Temperature of the fruit raised by saturated water vapor at 47.5°C (117.5°F) until the internal pulp temperature near the seed reaches 46.5°C (115.7°F). This temperature must be maintained for 30 minutes. The fruit must be sized for treatment, with temperature probes placed in the largest fruit in the batch being treated.			

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, APHIS, USDA, 209 River Street, Hoboken, NJ 07030.

Fruits and vegetables required to be treated for fruit flies would be restricted to North Atlantic ports of arrival if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not become established pests in the United States. North Atlantic ports are: Atlantic ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments to Washington, DC (including Baltimore-Washington International and Dulles International airports).

Pest risk analyses conducted by the agency have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a U.S. Department of Agriculture inspector. As noted, the fruits and vegetables would be subject to inspection and treatment at the port of first arrival, in accordance with § 319.56–6.

Special Conditions

Cantaloupe from Ecuador: The regulations do not currently provide for the importation of cantaloupe (*Cucumis melo*) from Ecuador because of the presence in South America of the South American cucurbit fly (*Anastrepha grandis*). We are proposing to allow the importation of cantaloupe from Ecuador under the following conditions:

(1) The cantaloupe may be imported in commercial shipments only;

(2) The cantaloupe must have been grown in an area where trapping for the South American cucurbit fly has been conducted for at least the previous 12 months by the plant protection service of Ecuador, under the direction of APHIS,[4] with no findings of the pest. Currently, the area that meets these criteria is an area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guyaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar; and

(3) The cantaloupe may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe is packed must be stamped "not for distribtuion" in these areas.

We believe that these multiple safeguards would be adequate to prevent the introduction of the South American cucurbit fly. These safeguards are based on the following rationale:

Cantaloupe is a recorded host of the South American cucurbit fly, which is known to exist in a few places in South America. However, no commercially-produced cantaloupe has ever been recorded as a host of the South American cucurbit fly, nor has APHIS dtected the South American cucurbit fly in cantaloupe from any source. This information indicates that commercially-produced cantaloupe is unlikely to present a risk of introducing the South American cucurbit fly. Because this information is based on limited data, however, we believe additional precautions are warranted to ensure that even commercially-produced

[4] Information on the trapping program may be obtained by writing to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

cantaloupe from Ecuador is free of the South American cucurbit fly.

In Ecuador, there have been unconfirmed reports of the South American cucurbit fly is only a limited area. To ensure that commercially-produced cantaloupe for export is free of the South American cucurbit fly, the Ecuadoran government has conducted trapping for the fruit fly under the direction of APHIS for over a year now throughout the area where this cantaloupe is being grown. No South American cucurbit flies have been detected in this area. It would appear that commercially-produced cantaloupe from this trapped area would present very little risk of introducing the South American cucurbit fly.

However, the trapping will not keep the South American cucurbit fly from entering the commercial growning area; it will only let us know if this happens. And although measures could be taken immediately to stop cantaloupe from being exported from this area to the United States if the South American cucurbit fly is detected, we would have to consider the possibility that cantaloupe carrying the fruit flies might already have been shipped to the United States.

Therefore, as one final precaution, we believe it would be prudent to prohibit the movement of the cantaloupe into areas of the United States where the South American cucurbit fly could become established. These area are: Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands.

Pest risk analyses conducted by the agency have determined that any other injurious plant pests that might be carried by the commercially-produced cantaloupe would be readily detectable by a U.S. Department of Agriculture inspector. As noted, the cantaloupe would be subject to inspection and treatment at the port of first arrival, in accordance with § 319.56–6.

We are not proposing to allow the importation of noncommercially-produced cantaloupe from Ecuador. Wild or "backyard" produce is generally grown and packed under very different conditions than commercially-produced fruits and vegetables (e.g., wild or backyard produce usually involves different varieties of produce and different cultivation techniques, little or no pest control, and a lack of sanitary controls during growing and packing). As a result, there is reason to believe that wild or backyard produce presents a greater pest risk than commercially produced fruits and vegetables. The scientific literature does not support or refute this idea. Not only is there limited information available about the South American cucurbit fly, as noted above, but most studies upon which the scientific literature on this pest and other plant pests are based are conducted in commercial fields or on commercially produced fruits and vegetables. Very few such studies are made on wild or backyard plantings.

Miscellaneous

We propose to add the following definitions:

"*Above ground parts.* Any plant parts, such as stems, leaves, fruit, or inflorescence, that grow solely above the soil surface."

"*Commercial shipment.* Shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer."

"*Cucurbits. Benincapsa hispida* (wax gourd), *Citrullus lanatus* (watermelon), *Cucumis* spp. (including, but not limited to cucumber, kiwano, cantaloupe, honeydew, muskmelon, and Indian gherkin), *Cucurbita* spp. (including, but not limited to squash, zucchini, crenshaws, pumpkin, and marrow), *Legenaria* spp. (including, but not limited to the white-flowered gourds), *Luffa* spp. (including, but not limited to luffa and angled luffa), *Momordica balsamina* (balsam-apple), *Momordica charantia* (bitter gourd), and *Sechium edule* (chayote)."

Executive Order 12291 and Regulatory Flexibility Act

This proposal would amend the regulations governing the importation of fruits and vegetables into the United States by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious plant pests into the United States. This proposal also would amend the regulations by allowing seven currently imported fruits and vegetables to be entered into the United States under less restrictive conditions.

A limited number of the fruits and vegetables would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, would be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

This proposed action is part of an ongoing process of updating the list of enterable fruits and vegetables, as data on pest risk changes and as we receive and evaluate requests to import new commodities.

As previously announced in the annual Regulatory Program of the United States Government, we are considering other changes to the regulations in order to improve our ability to prevent the introduction of plant pests. We have also reviewed the regulations in response to the President's regulatory review initiative. We will analyze the projected costs and benefits of any changes to the regulations that we propose; their potential economic impact is unknown at this time.

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

We estimated the economic impact of this proposed rule using data for three of the 93 commodities included: apples, bananas, and mangoes. These were the only commodities for which retail price data, retail demand elasticities, and some information on national production and trading capabilities were available. The economic impact was

estimated for the first year only, because there are many variables which cannot be adequately predicted over a longer time frame.

Based on our evaluation of these three commodities, we project a net benefit to the United States of more than $19 million in the first year following adoption of this proposed rule. We estimate that U.S. consumer gains would exceed $64 million in the first year, with most of these gains (70 percent) attributable to increased apple supplies. An estimated 27 percent of projected consumer gains would be due to increased supplies of mangoes.

We estimate that consumers will reap additional gains from importation of the remaining 90 commodities, with little or no losses to domestic producers, because many of the remaining 90 commodities are specialty crops that are either not produced in the United States, or are produced in limited quantities.

We estimate that U.S. producer losses for the three commodities we evaluated would be about $45 million in the first year, with about 93 percent attributable to greater apple supplies. The projected first year loss for fresh apple producers is estimated at no more than 1 percent of their almost $4 billion annual revenue.

It is likely that U.S. demand for fresh fruits and vegetables will continue to increase. In the longer run, this growth in demand could allow the United States to absorb additional quantities of fresh fruits and vegetables without a change in price. Therefore, U.S. producers could face losses only in the short run.

The proposed rule could have economic consequences for some small U.S. producers. The following figures were taken from the 1987 Census of Agriculture. There are 36,718 apple producers in the United States. The top five apple producing States are Washington, California, Michigan, Pennsylvania, and New York. Ninety-four percent of the 563 U.S. banana producers are located in Hawaii. Seventy-two percent of the 379 U.S. mango producers are located in Florida.

The Census of Agriculture also provides data concerning the total market value of agricultural products sold by all fruit and tree nut producers. Approximately 14 percent of all U.S. fruit and tree nut producers sell agricultural products with a total average market value of $100,000 or more. About 23 percent of the fruit and tree nut producers have annual average sales between $20,000 and $99,999, while almost 31 percent have sales between $2500 and $19,999. Thirty-three percent of the total fruit and tree nut producers in the United States have annual sales of less than $2500. It would appear, therefore, that a large number of small entities could be affected by the changes in this proposed rule. However, it is important to note that the principal occupation for over 54 percent of all fruit and tree nut producers is something other than farming. This implies that while these small producers could face losses, sales of fruits and nuts is probably not their primary source of income. While the Census of Agriculture does not provide similar information for specific fruits and nuts, it is assumed that a similar sales profile exists for the three commodities examined in this analysis.

It was not possible to determine how the estimated producer losses that may result from this rulemaking would affect producers' profit margins, because production costs were not available for the commodities examined in this analysis. It also was not possible to determine whether U.S. producers would lose 100 percent of the projected price decline or share a portion of the losses with fresh fruit and vegetable wholesalers and retailers.

As an alternative to this proposed rule, we considered taking no action to relieve restrictions on previously prohibited fruits and vegetables. This alternative was rejected because the Department's regulatory authority with respect to the importation of fruits and vegetables is limited to preventing the introduction of exotic plant pests and diseases. Pest risk assessments indicate that the actions we are proposing will not result in any significant pest or disease risk.

This proposed rule would not result in any significant increase in reporting, recordkeeping, or compliance requirements.

Regulations governing the importation of fruits and vegetables are authorized under the Plant Quarantine Act (7 U.S.C. 151–165 and 167).

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States. State and local laws and regulations regarding the importation of fresh fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This proposed rule would have no retroactive effect and would not require administrative proceedings before parties could file suit in court.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator, Animal and Plant Health Inspection Service, has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through ______, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In § 319.56–1, three definitions would be added in alphabetical order to read as follows:

§ 319.56–1 Definitions.

Above ground parts. Any plant parts, such as stems, leaves, fruit, or inflorescence, that grow solely above the soil surface.

Commercial shipment. A shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Cucurbits. Benincapsa hispida (wax gourd), *Citrullus lanatus* (watermelon), *Cucumis* spp. (including, but not limited to cucumber, kiwano, cantaloupe, honeydew, muskmelon, and Indian gherkin), *Cucurbita* spp. (including, but not limited to squash, zucchini, crenshaws, pumpkin, and marrow), *Lagenaria* spp. (including, but not limited to the white-flowered gourds), *Luffa* spp. (including, but not limited to luffa and angled luffa), *Momordica balsamina* (balsam-apple), *Momordica charantia* (bitter gourd), and *Sechium edule* (chayote).

* * * * *

§ 319.56–2p [Amended]

5. In § 319.56–2p, paragraph (a)(1) would be amended by adding the word "Suriname," immediately after the word "Peru,".

6. In § 319.56–2p, the heading to paragraph (c) would be amended by removing the phrase "Mexico and the Dominican Republic" and by adding "the Dominican Republic, Mexico, and Suriname" in its place.

7. In § 319.56–2p, the introductory text to paragraph (c) would be amended by removing the phrase "Mexico or the Dominican Republic" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

8. In § 319.56–2p, paragraph (c)(1) would be amended by removing the phrase "the Dominican Republic or Mexico" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

9. Section 319.56–2t, would be revised to read as follows:

§ 319.56–2t Administrative instructions; conditions governing the entry of certain fruits and vegetables.

The following commodities may be imported into the United States from the places specified in accordance with § 319.56–6 and all other applicable requirements of this subpart:

Country	Common name	Botanical name	Plant part(s)
Argentina	Endive	*Cichorium endivia*	Leaf and stem.
Barbados	Banana	*Musa* spp	Flower.
Belgium	Pepper	*Capsicum* supp	Fruit.
Bermuda	Avocado	*Persea americana*	Fruit.
	Carambola	*Averrhoa carambola*	Fruit.
	Grapefruit	*Citrus paradisi*	Fruit.
	Guava	*Psidium guajava*	Fruit.
	Lemon	*Citrus limon*	Fruit.
	Longan	*Dimocarpus longan*	Fruit.
	Loquat	*Eriobotrya japonica*	Fruit.
	Natal plum	*Carissa macrocarpa*	Fruit.
	Orange, sour	*Citrus aurantium*	Fruit.
	Orange, sweet	*Citrus sinensis*	Fruit.
	Passion fruit	*Passiflora* spp	Fruit.
	Suriname cherry	*Eugenia uniflora*	Fruit.
Bolivia	Belgian endive	*Cichorium intybus*	Leaf.
Colombia	Rhubarb	*Rheum rhabarbarum*	Stalk.
	Snow pea	*Pisum sativum* subsp. *sativum*	Flat, immature pod.
Cook Islands	Banana	*Musa* spp	Green fruit.[1]
	Cucumber	*Cucumis sativus*	Fruit.
	Drumstick	*Moringa pterygosperma*	Leaf.
	Indian mulberry	*Morinda citrifolia*	Leaf.
Costa Rica	Basil	*Ocimum*, spp	Whole plant.
	Chinese kale	*Brassica alboglabra*	Leaf and stem.
	Chinese turnip	*Raphanus sativus*	Root.
Dominica	Durian	*Durio zibethinus*	Fruit.
Great Britain	Basil	*Ocimum* spp	Leaf and stem.
Grenada	Abiu	*Pouteria caimito*	Fruit
	Bilimbi	*Averrhoa bilimbi*	Fruit.
	Breadnut	*Brosimum alicastrum*	Fruit.
	Cocoplum	*Chrysobalanus icaco*	Fruit.
	Cucurbits	Curcurbitaceae	Fruit.
	Durian	*Durio zibethinus*	Fruit.
	Jackfruit	*Artocarpus heterophyllus*	Fruit.

Country	Common name	Botanical name	Plant part(s)
	Jambolan	*Syzygium cumini*	Fruit.
	Jujube	*Ziziphus* spp	Fruit.
	Langsat	*Lansium domesticum*	Fruit.
	Litchi	*Litchi chinensis*	Fruit.
	Malay apple	*Syzygium malaccense*	Fruit.
	Mammee apple	*Mammea americana*	Fruit.
	Peach palm	*Bactris gasipaes*	Fruit.
	Piper	*Piper* spp	Fruit.
	Pulasan	*Nephelium ramboutan-ake*	Fruit.
	Rambutan	*Nephelium lappaceum*	Fruit.
	Rose apple	*Syzygium jambos*	Fruit.
	Santol	*Sandoricum koetjape*	Fruit.
	Sapote	*Pouteria sapota*	Fruit.
Guatemala	Artichoke, globe	*Cynara scolymus*	Immature flower head.
	Eggplant	*Solanum melongena*	Fruit.
	Loroco	*Fernaldia* spp	Above ground parts.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemisia dracunculus*	Leaf and stem.
Haiti [2]	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Honduras	Banana	*Musa* spp	Flower.
	Chicory	*Cichorium* supp	Leaf and stem.
	Radish	*Raphanus sativus*	Below ground parts.
Israel	Garden rocket	*Eruca sativa*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Jamaica	Jackfruit	*Artocarpus heterophyllus*	Fruit.
Japan	Mung bean	*Vigna radiata*	Seed sprout.
	Soybean	*Glycine max*	Seed sprout.
Korea	Bonnet bellflower	*Codonopsis lanceolata*	Root.
	Chard	*Beta vulgaris* subsp. *cicla*	Leaf.
	Mugwort	*Artemisia vulgaris*	Leaf and stem.
	Onion	*Allium cepa*	Bulb.
	Shepherd's purse	*Capsella bursa-pastoris*	Leaf and stem.
	Watercress	*Nasturtium officinale*	Leaf and stem.
Liberia	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Mexico	Anise	*Pimpinella anisum*	Leaf and stem.
	Banana	*Musa* spp	Flower.
	Cucurbits	Curcurbitaceae	Inflorescence.
	Garden rocket	*Eruca sativa*	Leaf and stem.
	Piper	*Piper* spp	Leaf and stem.
	Porophyllum	*Porophyllum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Thyme	*Thymus vulgaris*	Above ground parts.
New Zealand	Avocado	*Persea americana*	Fruit.
	Fig	*Ficus carica*	Fruit.
Panama	Basil	*Ocimum* spp	Above ground parts.
	Bean, green and lima	*Phaseolus vulgaris* and *P. lunatus*	Seed.
	Chervil	*Anthriscus cerefolium*	Above ground parts.
	Eggplant	*Solanum melongena*	Fruit.
	Lemon thyme	*Thymus citriodorus*	Leaf and stem.
	Mint	*Mentha* spp	Above ground parts.
	Oregano	*Origanum* spp	Above ground parts.
	Rosemary	*Rosmarinus officinalis*	Above ground parts.
	Tarragon	*Artemesia dracunculus*	Leaf and stem.
Peru	Basil	*Ocimum* spp	Leaf and stem.
	Dill	*Anethum graveolens*	Above ground parts.
	Oregano	*Origanum* spp	Leaf and stem.
	Parsley	*Petroselinum crispum*	Leaf and stem.
	Radicchio	*Cichorium* spp	Leaf.
	Thyme	*Thymus vulgaris*	Above ground parts.
Sierra Leone	Cassava	*Manihot esculenta*	Leaf.
	Jute	*Corchorus capsularis*	Leaf.
	Potato	*Solanum tuberosum*	Leaf.
Suriname	Amaranth	*Amaranthus* spp	Leaf and stem.
	Black palm nut	*Astrocaryum* spp	Fruit.
	Jessamine	*Cestrum latifolium*	Leaf and stem.
	Malabar spinach	*Bassella alba*	Leaf and stem.
	Mung bean	*Vigna radiata*	Seed sprout.
	Pak choi	*Brassica chinensis*	Leaf and stem.
Sweden	Dill	*Anethum graveolens*	Above ground parts.
Taiwan	Wasabi (Japanese horseradish)	*Wasabia japonica*	Root and stem.
Thailand	Dasheen	*Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp	Leaf and stem.
Tonga	Burdock	*Arctium lappa*	Root, stem and leaf.
Trinidad	Leren	*Calathea allouia*	Tuber.

[1] The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or are yellow but firm.

[2] Executive Order 12779 of October 28, 1991 (56 FR 55975–55976, published October 30, 1991), prohibits the importation into the United States of any goods of Haitian origin, other than publications and other informational materials, or of services performed in Haiti. Importation of any Haitian produce would not be allowed as long as this Executive Order is in effect.

10. In Subpart—Fruits and Vegetables, a new § 319.56-2w and § 319.56-2x would be added to read as follows:

§ 319.56-2w Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) The following fruits and vegetables may be imported into the United States only if they have been treated as follows, in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Fruit or vegetable	Country	Treatment
Kiwi (fruit), *Actinidia deliciosa*	Greece	(1) Cold treatment—for the Mediterranean fruit fly, or
		(2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly.
Tangerine (fruit), *Citrus reticulata*	Greece	(1) Cold treatment—for the Mediterranean fruit fly, or
		(2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly.
Loquat (fruit), *Eriobotrya japonica*	Israel	Cold treatment—for the Mediterranean fruit fly.
Apple (fruit) *Malus domestica*	Jordan	Cold treatment—for the Mediterranean fruit fly.
Persimmon (fruit), *Diosypros* spp	Jordan	Cold treatment—for the Mediterranean fruit fly.
Apple (fruit), *Malus domestica*	Lebanon	Cold treatment—for the Mediterranean fruit fly.
Bean, green and lima (pod), *Phaseolus vulgaris*	Panama	Fumigation with methyl bromide—for pod-boring insects.
Mango (fruit), *Mangifera indica*	Taiwan	Vapor heat treatment—for the Oriental fruit fly.

(b) Fruits and vegetables listed above and required to be treated for fruit flies may arrive in the United States only at a North Atlantic port if treatment has not been completed before the fruits and vegetables arrive in the United States. North Atlantic ports are: Atlantic ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

§ 319.56-2x Administrative instructions; conditions governing the entry of cantaloupe from Ecuador.

(a) Cantaloupe (*Cucumis melo*) may be imported into the United States from Ecuador only under the following conditions:

(1) The cantaloupe may be imported in commercial shipments only;

(2) The cantaloupe must have been grown in an area where trapping for the South American cucurbit fly has been conducted for at least the previous 12 months by the plant protection service of Ecuador, under the direction of APHIS,[3] with no findings of the pest.

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through El 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja, and Zapotal to El Azucar; and

(4) The cantaloupe may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands.

The boxes in which the cantaloupe is packed must be stamped "Cantaloupes not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI."

(b) [Reserved]

Done in Washington, DC, this 10th day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13994 Filed 6-12-92; 8:45 am]

BILLING CODE 3410-34-M

[3] Information on the trapping program may be obtained by writing to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-55-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain de Havilland Division Model DHC-7 series airplanes, that would have required a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary. That proposal was prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. This action revises the proposed rule by requiring installation of stainless steel cable assemblies. The actions specified by this proposed AD are intended to prevent failure of the cables to extend, resulting in a gear-up landing.

DATES: Comments must be received by July 6, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-55-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-55-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-55-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain de Havilland Division Model DHC-7 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 8, 1992 (57 FR 11924). That NPRM would have required a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary. That NPRM was prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. That condition, if not corrected, could result in failure of the cables to extend, resulting in a gear-up landing.

Since the issuance of that NPRM, the FAA has determined that the installation of stainless steel cable assemblies, as described in de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991, is necessary in order to reduce the possibility of corrosion in the cable assembly. Therefore, the proposal has been revised to include a requirement for such installation. The proposal would require that affected operators install stainless steel cables within six months.

If operators detect corrosion as a result of the inspection proposed by this AD action, they would be permitted to install carbon steel cables after accomplishing the inspection; however, operators would be required to replace the carbon steel cables with stainless steel cables within twelve months.

The economic analysis paragraph, below, has been revised to include the number of work hours and parts costs associated with installation of the cable assemblies.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the inspection, and 15 work hours per airplane to accomplish the modification, at an average labor rate of $55 per work hour. Required parts would cost approximately $825 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $91,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and Responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, de Havilland Division: Docket 92-NM-55-AD.

Applicability: Model DHC-7 airplanes; on which stainless steel cables, Post-Modification Number 7/2609, have not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed inspection of the left- and right-hand main landing gear (MLG) emergency down release cables to detect corrosion, in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(b) If any corrosion is detected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace both cable assemblies with either stainless steel cables (Post-Modification Number 7/2609) or carbon steel cables (Pre-Modification 7/2609), in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(c) Within 6 months after the effective date of this AD, or within 12 months after installing carbon steel cables, if installed in accordance with paragraph (b) of this AD: Install Post-Modification 7/2609 cables, in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(e) Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 18, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13974 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-46-AD]

Airworthiness Directives; British Aerospace Model 146-100A, -200A, and -300A Series Airplanes, Equipped With Dunlop Hydraulic Fuses, Part Number ACM29100

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 146-100A, -200A, and -300A series airplanes. This proposal would require removing certain hydraulic fuses and installing new hydraulic fuses that have an improved design. This proposal is prompted by two cases of fuse failure. The actions specified by the proposed AD are intended to prevent double hydraulic system failure and potential loss of airplane braking and directional control.

DATES: Comments must be received by July 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, (FAA) Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-46-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O, Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-46-AD." The postcard will be date stamped and returned to the commenter. Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-46-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is airworthines authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 146-100A, -200A, and -300A series airplanes. The CAA advises that there have been several failures to the fork end fitting to the hydraulic fuses in the "yellow" hydraulic system. Similar fuses are installed in the "green" hydraulic system. The failure of the "yellow" hydraulic system is most likely to occur during operation of the parking brake when the four fuses of that system experience full system hydraulic pressure. There have been two occurrences of a double hydraulic system failure caused by the failure of either a green or yellow hydraulic system hydraulic fuse, followed by a similar failure of the fuse in the remaining system. This condition, if not corrected, could result in loss of airplane braking and directional control while the airplane is on the ground.

British Aerospace has issued Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991, which describes procedures for removal of certain "yellow" and "green" hydraulic systems Dunlop hydraulic fuses, and installation of new hydraulic fuses having an improved design. (This British Aerospace service bulletin references Dunlop Service Bulletin ACM29100-32-1056, dated September 27, 1991, for additional information). The CAA classified this British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removing certain Dunlop hydraulic fuses and installing new hydraulic fuses. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Replacement parts will be provided at no cost to operators.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $54,945. This total cost figure assumes that no operator has yet accomplished the requirements of this proposed AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive, or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 an 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-46-AD.

Applicability: Model 146-100A, -200A, and -300A series airplanes, equipped with Dunlop hydraulic fuses, part number ACM29100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential loss of airplane braking and directional control, accomplish the following:

(a) Prior to the accumulation of 4,000 landings since installation of Dunlop hydraulic fuses having part number ACM29100 (Mod. states 1 or 2), or within 60 days after the effective date of this AD, whichever occurs later, remove green and yellow hydraulic systems Dunlop hydraulic fuses having part number ACM29100 (Mod states 1 or 2) and install new hydraulic fuses having part number ACM30506 (Mof. 1), in accordance with British Aerospace Modification Service Bulletin SB.32-130-70295C, dated September 27, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13975 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF49

Updating Rehabilitation Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to revise current provisions under which a service-disabled veteran who has been provided a program of rehabilitation services may be found rehabilitated. Under current criteria a determination of rehabilitation is generally limited to cases in which the veteran secures the type of employment specified in his or her rehabilitation plan or has achieved the goals of a program of independent living services. We believe it would be more consistent with statutory provisions to also declare a veteran rehabilitated if he or she has overcome the employment handicap which necessitated the program of rehabilitation services, but may not have done so as stipulated in the rehabilitation plan. The intended effect of these proposed regulatory changes is to make decisions regarding the determination of rehabilitation more consistent with statutory provisions.

DATES: Comments must be received on or before July 15, 1992. These proposed amendments are effective 30 days after the date of final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, (202) 233-6496, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202-233-6496.

SUPPLEMENTARY INFORMATION: The purposes of the rehabilitation program are "to provide for all services necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable, and to obtain and maintain suitable employment". A requirement for basic entitlement to a rehabilitation program is that the individual be found "in need. Under the law, veterans found to have employment handicaps (i.e., the impairment of the veteran's ability to prepare for, obtain or maintain employment) may be provided a program of rehabilitation services to overcome his or her handicap through achievement of a suitable vocational goal or a substantial increase in the veteran's ability to live independently. The services which VA determines are necessary to become rehabilitated are incorporated in an Individualized Written Rehabilitation Plan (IWRP).

VA has established a case status system in order to mark the progress of a veteran in a rehabilitation program. As provided in § 21.196 the "rehabilitated status is for the purpose of identifying cases where rehabilitation or employment service goals are substantially achieved." However, current regulatory provisions permit

administrative assignment of this case status only under the narrower criterion that the veteran has obtained and maintained employment consistent with the veteran's Individualized Written Rehabilitation plan (IWRP). This provision does not include cases in which the veteran has overcome his or her employment handicap to the maximum extent feasible, but may not have done so in the field or occupation stipulated in the veteran's IWRP. We are proposing that current rules be modified to declare a veteran rehabilitated when the employment handicap (i.e., the impairment of the veteran's ability to prepare for, obtain or maintain employment) has been overcome to the maximum éxtent feasible. The provisions of the revised regulation are described below.The proposed criteria for determining rehabilitation retain the current provisions under which a veteran who completes the training portion of the rehabilitation plan and achieves the employment or independent living goals of the program may be declared rehabilitated. It is proposed that the veteran also be declared rehabilitated under the following conditions:

1. An intensive search for employment in the occupational objective of the veteran's plan or in a closely related occupation or field is unsuccessful. The veteran subsequently secures employment in another occupation or field which is consistent with his or her abilities, aptitudes and interests. In addition, the employment requires the use of some of the academic, technical or professional knowledge and skills which the veteran has obtained during his or her participation in the rehabilitation program, and he or she maintains the employment for at least 60 days.

2. A veteran completes the prescribed training and rehabilitation services and then pursues additional training that may not be provided under the rehabilitation program. The veteran may be declared rehabilitated if the additional training will enhance the veteran's ability to secure suitable employment; or

3. The veteran does not complete all of the prescribed program of rehabilitation services and subsequently obtains employment which is not in the field or occupation specified in the plan or in a closely related field or occupation. The veteran may be declared rehabilitated if employment which he or she has obtained makes substantial use of the services provided under the rehabilitation plan, is consistent with his or her abilities, aptitudes and interests and the veteran has maintained the employment for at least 60 continuous days.

VA has determined that these proposed amendments do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are effective 30 days after the date of final publication in the **Federal Register**. The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational Education, Vocational rehabilitation.

Approved: April 8, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR, part 21, is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. The authority citation for part 21, subpart A is revised to read as follows:

Authority: 38 U.S.C., 501(a).

2. Section 21.194 is amended by revising paragraph (d) (1) and (2) to read as follows:

§ 21.194 "Employment services" status.

* * * * *

(d) *Termination of employment services status.* * * *

(1) He or she is determined to be rehabilitated under the provisions of § 21.283; or

(2) He or she is:

(i) Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in § 21.283, if the veteran intends to maintain this employment and declines further assistance; and

(ii) Adjusted to the duties and responsibilities of the job.

* * * * *

3. Section 21.196 is amended by revising paragraph (b) and the authority to paragraph (b) to read as follows:

§ 21.196 "Rehabilitated" status.

* * * * *

(b) *Assignment to "rehabilitated" status.* A veteran's case shall be assigned to "rehabilitated" status when his or her case meets the criteria for rehabilitation contained in § 21.283.

(Authority: 38 U.S.C. 3102, 3107 and 3117)

* * * * *

4. In part 21, Subpart A, § 21.283 is added to read as follows:

§ 21.283 Rehabilitated.

(a) *General.* For purposes of Chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101(1)(2))

(b) *Definition.* The term *suitably employed* includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupational objective of a rehabilitation plan or a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veteran's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107, 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

(1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.

(2) The employment obtained is consistent with the veteran's abilities, aptitudes and interests.

(3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.

(4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3100(1), (3107) (3117)

(e) *Independent living.* A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:

(1) The veteran, nevertheless, has attained a substantial increase in the level of independence with the program assistance provided;

(2) The veteran has maintained the increased level of independence achieved for at least 60 days; and

(3) Further assistance is unlikely to significantly increase the veteran's level of independence.

(Authority: 38 U.S.C. 3101(1), (2), 3107)

§ 21.284 [Amended]

5. In § 21.284, the introductory text to paragraph (a) is amended by removing the reference to "§ 21.196" and adding in its place "§ 21.283."

[FR Doc. 92-13795 Filed 6-12-92; 8:45 am]

BILLING CODE 8320-01-M

UNITED STATES COMMISSION ON CIVIL RIGHTS

45 CFR Part 708

Regulations for Collection by Salary Offset From Indebted Current or Former Employees

AGENCY: United States Commission on Civil Rights.

ACTION: Proposed regulation.

SUMMARY: This regulation implements the collection procedures of the Debt Collection Act of 1982, Public Law 97-365, codified in 5 U.S.C. 5514, which authorizes the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 14, 1992.

ADDRESSES: Comments should be sent to: Solicitor's Unit, U.S. Commission on Civil Rights, 1121 Vermont Avenue, NW., Washington, DC 20425.

Comments received will be available for public inspection at: The Robert S. Rankin National Civil Rights Library, room 709, 1121 Vermont Avenue, NW., Washington, DC 20425.

Copies of this notice are available on tape for those with impaired vision or other physical handicap. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Solicitor, (202) 376-8351, TDD (202) 376-2683.

Background: Under the Debt Collection Act of 1982, when the head of a Federal agency determines that an employee of an agency is indebted to the United States or is notified by the head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin.

As required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27472, codified in 5 CFR 550 subpart K.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined by Executive Order 12291, dated February 17, 1981 because it will not result in: (1) An annual effect on the economy of more than $100 million or more; (2) a major increase in costs and prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual Federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 45 CFR Part 708

Administrative offset, Administrative practice, Claims, Debt collection, Government employee, Wages.

For the reasons set out in the preamble, part 708 of title 45 of the Code of Federal Regulations is added to read as follows:

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

§ 708.1 Purpose and scope.

(a) These regulations provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550 subpart K for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights ("the Commission"). This provision does not apply when the employee consents to recovery from his/her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.);

(2) The Social Security Act (42 U.S.C. 301 et seq.);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedure(s) in these regulations uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of these regulations the following definitions apply:

(a) "Agency" means: (1) An Executive agency as defined in section 105 of title 5 United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission; (2) a military department as defined in section 102 of title 5, United States Code; (3) an agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation; (4) an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and (5) other independent establishments that are entities of the Federal Government.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States, and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Assistant Staff Director for Management" means the Assistant Staff Director for Management of the U.S. Commission on Civil Rights or in his/her absence, or in the event of a vacancy in the position or its elimination, the Personnel and EEO Officer.

(e) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) "Former employee" means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) "FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 et seq.

(i) "Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Assistant Staff Director for Management of the U.S. Commission on Civil Rights.

(j) "Paying agency" means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) "Pay interval" will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) "Retainer pay" means the pay above the maximum rate of an employee's grade which he/she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 708.4 Applicability.

These regulations are to be followed when:

(a) The U.S. Commission on Civil Rights is owed a debt by an individual who is a current employee of the Commission; or

(b) The U.S. Commission on Civil Rights is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Assistant Staff Director for Management (ASDM) or in his/her absence, or in the event of a vacancy in that position or its elimination, the Personnel and EEO Officer (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the ASDM, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR 101.1 et seq.);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (i.e., within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR part 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. chapter 75 and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt which is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Assistant Staff Director for Management not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses which the employee believes support his/her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his/her control or because he/she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the ASDM's offset schedule if he/she fails to show good cause why he/she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under the above procedures, the Assistant Staff Director for Management shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c).

(d) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(e) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another federal agency.

(a) The Commission is the creditor agency when the Assistant Staff Director for Management determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Assistant Staff Director for Management shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date of Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency responsible for making such payments stating the amount of the debt and indicating that the provisions of this party have been followed; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service

Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a property certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency which is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than $25 per pay period or $50 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or

(b) The creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order;

(c) Upon receipt of monies returned in accordance with 02. above, the Commission will refund the amount to the current or former employee.

(d) Unless required by law, refunds under this subsection shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owned by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: June 2, 1992.

Emma Monroig,

Solicitor.

[FR Doc. 92-13370 Filed 6-12-92; 8:45 am]

BILLING CODE 6335-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 572, 580, and 581

[Docket No. 92-35]

Inquiry Concerning Various Regulatory Issues

AGENCY: Federal Maritime Commission ("FMC" or "Commission").

ACTION: Notice of inquiry.

SUMMARY: The FMC is soliciting comment on the following issues concerning service contracts (Issue No. 1 also pertains to tariffs):

1. Consider changing FMC regulations to no longer accept the voluntary filing of tariffs and service contracts covering excepted commodities;

2. Consider an FMC rulemaking to simplify the filing of service contracts' "essential terms";

3. Consider an FMC rulemaking to define the term "similarly situated shipper";

4. Consider an FMC rulemaking to clarify carriers' and conferences' obligations with regard to their duty to deal with shippers' associations and non-vessel-operating common carriers

("NVOCCs") with respect to service contracts; and

5. Consider an FMC rulemaking permitting service contracts to be based on a percentage of a shipper's cargo.

In addition, the Commission is soliciting comment on whether to:

6. Consider an FMC rulemaking to require every conference to establish an ombudsman or other nautral entity which would address complaints from shippers.

The information received will be used by the Commission to help determine which, if any, of these or other possible regulatory changes warrant consideration.

DATES: Comments (original and 15 copies) on or before July 30, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Robert A. Ellsworth, Director, Policy, Planning and Analysis, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5911.

During the deliberative process undertaken by the Advisory Commission on Conferences in Ocean Shipping, six major areas were identified by various parties as possible candidates for administrative action by the FMC. Of the six, five pertain, in whole or in part, to the subject of service contracts.

A service contract is defined by section 3(21) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702 3(21), as * * *

* * * A contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

A service contract is similarly defined by the FMC at 46 CFR 581.1.

The issues concerning service contracts are (Issue No. 1 also pertains to tariffs):

1. Consider changing FMC regulations to no longer accept the voluntary filing of tariffs and service contracts covering excepted commodities;

2. Consider an FMC rulemaking to simplify the filing of service contracts' "essential terms";

3. Consider an FMC rulemaking to define the term "similarly situated shipper";

4. Consider an FMC rulemaking to clarify carriers' and conferences' obligations in regard to their duty to deal with shippers' associations and NVOCCs with respect to service contracts; and

5. Consider an FMC rulemaking permitting service contracts to be based on a percentage of a shipper's cargo.

The remaining Issue No. 6 is whether the FMC should initiate a rulemaking to require every conference to establish an ombudsman or other neutral entity which would address complaints from shippers. Such a process would be in addition to, and not in lieu of, existing legal remedies available to shippers or carriers at the Commission.

1. Excepted Commodities

Background

The 1984 Act continues the requirement of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 801 *et seq.*, that all common carriers operating in the foreign commerce of the U.S. file tariffs with the FMC. Section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a), requires that "each common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices * * *." Certain commodities, however, are specifically excepted from the tariff filing requirement. These are: bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. 46 U.S.C. app. 1707(a)(1). Both "bulk caro" and "forest products" (in the form of a lumber exemption) had been previously excepted from tariff filing under the 1916 Act. "Recycled metal scrap," "waste paper," and "paper waste" were new classes of excepted commodities which were added by the 1984 Act.

The 1984 Act also excepted service contracts covering these same five classes of commodities from certain statutory filing requirements. Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), requires that all service contracts be filed on a confidential basis and that a statement of essential terms be published "[e]xcept for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste * * *." Thus, under the scheme of the 1984 Act, excepted commodities are not subject to filing in tariffs or as service contracts.

Nevertheless, during the rulemaking process implementing the 1984 Act, the question arose as to whether a carrier or conference could voluntarily file tariff provisions covering otherwise excepted transportation. In its final rules, the Commission allowed such voluntary filing. See 46 CFR 580.1(a). The Commission also allowed conferences to voluntarily file service contracts covering excepted commodities. See 46 CFR 581.3(d). In both cases, voluntary filing would then subject excepted commodities to the tariff and service contract requirements of non-excepted commodities.

At the time that it determined to permit such voluntary filing, the Commission announced its intention to consider more fully the question of the status and treatment of excepted commodities under the 1984 Act in a separate proceeding. See Docket Nos. 84-21, 84-23, and 84-24, Service Contracts; Loyalty Contracts; and Publishing and Filing Tariffs By Common Carriers in the Foreign Commerce of the United States, 22 S.R.R. 1424, 1431 (1984). The Commission indicated that this inquiry would include the subject of voluntary tariff filing and conference ratemaking authority over excepted commodities. The Commission initiated such a proceeding in Docket No. 85-6, Notice of Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984, 50 FR 10,807-10,810 (March 18, 1985), and invited comment on the interpretation to be given sections 8(a) and 8(c) with respect to excepted commodities.

Based upon the extensive comments received from carrier, shipper, and other interests, as well as the Department of Justice, the Commission determined that the issues raised were not subject to administrative resolution at that time. The Commission, therefore, discontinued the proceeding and determined to include the record in the proceeding in its report to Congress required by the 1984 Act, 46 U.S.C. app. 1717(c). See "Discontinuance of Proceeding," 24 S.R.R. 131 (May 6, 1987).

Discussion

The legislative history of the various statutes relating to excepted commodities suggests that considerations of competition and rate flexibility were the reasons for excepting them from tariff filing. Voluntary filing of tariffs covering excepted commodities could be seen as undercutting the apparent purpose of allowing excepted commodities to be

priced in a free market not subject to the price stabilizing effect of a tariff.

Unlike tariffs, service contracts are negotiated in an open market between carrier/conference and shipper. Thus, the stability established by the contract is mutually agreed to by both parties. Moreover, because service contracts exist over an extended period of time, there is less concern for speedy and flexible adjustments in terms. Finally, the legislative history of the pre-1984 Act Amendments dealing with excepted commodities does not have direct relevance to service contracts. Voluntary filing, nevertheless, subjects such service contracts to the same requirements as those for service contracts involving non-excepted commodities, and makes public the service contracts' essential terms which would otherwise be confidential. See 46 CFR 581.3(d)(3).

While voluntary filing of tariffs and service contracts covering excepted commodities is not precluded by the 1984 Act, such filing may not be wholly consistent with the original purposes in excepting certain commodities from mandatory filing. Also, it is not clear what proportion of excepted commoditiy rates and contracts are in fact filed with the Commission. Although the Commission determined not to administratively resolve these issues in Docket No. 85–6, it believes the issues to be of sufficient interest that it again seeks comment on whether administrative action may now be appropriate. Therefore, in order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, interested persons are invited to respond to the following specific questions and to comment on the proper treatment of excepted commodities under sections 8(a) and 8(c) of the 1984 Act.

1. Should a common carrier or a conference be permitted to continue to voluntarily file a tariff with the FMC covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the 1984 Act?

2. Should a common carrier or a conference be permitted to continue to voluntarily file a service contract with the FMC covering a commodity which is excepted from mandatory service contract filing under section 8(c) of the 1984 Act?

2. Filing of Service Contracts' Essential Terms

Background

Section 8(c) of the 1984 Act states the regulatory requirements for service contracts filed with the Commission. Specifically, section 8(c) requries that * * *

* * * Each [service] contract * * * shall be filed confidentially with the Commission, and at the same time, *a concise statement* of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms *shall include*—

(1) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(2) The commodity or commodities involved;

(3) The minimum volume;

(4) The line-haul rate;

(5) The duration;

(6) Service commitments; and

(7) The liquidated damages for nonperformance, if any * * * (Emphasis added.)

The Commission's regualtion concerning the content of essential terms, 46 CFR 581.5, tracks these statutory requirements. Under this provision, the requirement to file the statement of essential terms can be met by filing the entire text of the confidentially filed service contract, minus the shipper's name, or by filing a more abbreviated statement of the essential terms of the contract. As the Commission previously stated: "[t]o the extent that a service contract meets all the essential terms format requirements and is appropriately stated in terms of geographic areas or port ranges, it could be submitted, minus the shipper's name, in lieu of a statement of essential terms". Docket No. 84–21, Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the U.S.—Service Contracts and Time/Volume Contracts, 49 CFR 45,370 (November 15, 1984). This alternative filing procedure remains available under the current rules.

Discussion

When a carrier or a conference files as the essential terms of a service contract the entire text of a confidentially filed service contract, minus the name of the shipper, more information may be publicly disclosed than is statutorily required. It may be possible by means of a Commission rulemaking to simplify the filing of service contracts' essential terms. The future implementation of the Commission's Automated Tariff Filing and Information System ("ATFI"), in particular, could allow for a more efficient procedure for the filing of the essential terms of service contracts. The Commission is accordingly seeking comment on the feasibility and desirability of amending the existing service contract regulations to limit statements of essential terms to only that information which is expressly required by statute.

Specific comments are also sought on the following issues, as well as on any other matter deemed to be relevant.

1. Is the recitation of essential terms contained in section 8(c) 1–7 of the 1984 Act legally intended to comprise the exclusive list of such terms, or could the essential terms include other factors or variables?

2. What are the benefits and what are the costs associated with filing as the essential terms of a service contract the entire text of a confidentially filed service contract, minus the name of the shipper?

3. What are the benefits and what are the costs associated with the public disclosure of a service contract's non-essential terms?

4. Is it a matter of significant business importance or convenience that the Commission simplify the filing of service contracts' essential terms?

3. Similarly Situated Shipper

Background

Although section 8(c) of the 1984 Act requires that service contract essential terms be filed with the Commission, and that those essential terms be made available to all shippers similarly situated, the 1984 Act does not define the term "similarly situated shipper". The Commission has interpreted the term "similarly situated shipper" in the context of an access request to a service contract. An access or "me-too" shipper is any shipper seeking to access the essential terms of a service contract—*i.e.*, moving the same commodities, between the same points, during the same time periods. The Commission concluded that in that context "similary situated shipper" means a shipper willing and able to meet all the essential terms of a particular contract. *See* Docket No. 88–15, *California Shipping Line, Inc.* v. *Yangming Marine Transport Corp.*

Discussion

If a carrier or conference chooses to conduct or induce business by means of a service contract, it should be prepared to offer the same essential terms to other similarly situated shippers. *See* Docket Nos. 84–21, 84–23 and 84–24, *Service Contracts; Loyalty Contracts;*

and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States.

Some carriers and shippers have argued that the lack of a definition of "similarly situated shipper" inhibits service contracting, because a carrier/conference entering into a service contract for a commodity does not know whether it must grant the same rate to a shipper in a different industry shipping a similar commodity. The number of "me-too" contracts is, however, a very small percentage of the service contracts filed with the Commission. This may suggest that any shipper which can come close to meeting the terms of a service contract is in a position to negotiate its own. This could also be due to the fact that carriers and conferences may write contracts in such detail and with such shipper specificity that technically nobody but the contracting shipper could use or benefit from the particular contract. Concepts like "similarly situated" may be best left to resolution on an *ad hoc* basis, especially given the infinite variety of terms in a service contract.

Nevertheless, in the interest of exploring whether the Commission might and should by rule define the term "similarly situated shipper," the Commission is seeking comments on the issue. In order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, commenters are urged to suggest an appropriate definition of a "similarly situated shipper" and to also address the following specific questions.

1. Does the lack of a definition for "similarly situated shippers" inhibit service contracts?

2. Is the interpretation of the term "similarly situated" best left to resolution on an *ad hoc* basis?

4. Carrier and Conference Service Contract Obligations

Background

The Commission's regulations concerning carrier or conference obligations as they pertain to service contracts is contained in 46 CFR 581.4(b)(2). Specifically, carrier/conference obligations to shippers include maintaining a single, current copy of the service contract and Essential Terms Publication in the form prescribed under § 581.4(b)(2). The carrier/conference also must make available the essential terms of an initial service contract to all other shippers similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the service contract, as may be adjusted under § 581.8(d). The carrier/conference shall reply to shipper requests for the same essential terms by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier/conference may require the contract offer to be accepted within a specified period of time.

Discussion

In enacting the 1984 Act, Congress sought to balance reforms easing government regulation of carriers with provisions to enhance shipper negotiating power with carriers. Thus, while Congress authorized carriers to organize into conferences and rationalize services with clear antitrust immunity, it counterbalanced the conference system with competitive safeguards such as mandatory independent action and service contracts. *See* H.R. Rep. No. 53, 98th Cong. 2d Sess. 3, (1983). At the same time, Congress was concerned that in balancing the interests of carriers and shippers there was a danger that small and medium-sized shippers would be placed at a competitive disadvantage with large shippers, who had the volume of shipments required to effectively negotiate service contracts:

> It is likely that service contracts will be sought mainly by large shippers with strong market leverage. Small shippers would be left to face higher common carriage rates, which would be required by the shift of large volumes of hitherto high value cargoes to lower contract rates. The Committee is seriously concerned that service contracts not be employed so as to discriminate against all who rely upon the common carriage tradition of the liner system. The purpose of this legislation is to regulate fairly a system of common carriage.

Id. at 17.

As a result of its concern that small and medium-sized shippers not be unfairly discriminated against, Congress gave statutory recognition under the 1984 Act of shippers' associations. They are intended to redress the imbalance between small and medium-sized shippers and larger shippers which might otherwise have resulted from the introduction of service contracting into the statutory scheme. Congress further emphasized the importance of shippers' associations by making it a prohibited act for any common carrier, either alone or in conjunction with any other person, directly or indirectly, to refuse to negotiate with a shippers' association. Section 10(b)(13) 46 U.S.C. app. 1709(b)(13). Thus, shippers' associations are an alternative for small or medium sized shippers who do not have sufficient volume to obtain a favorable service contract from an ocean common carrier or conference. A "shippers' association" is defined as "* * * a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts." 46 U.S.C. app. 1702(24). Shippers' associations are cooperative membership associations which may or may not have NVOCC members.

Despite Congress' statutory recognition of shippers' associations, and the requirement that conferences negotiate service contracts with shippers' associations, there is a concern that shippers' associations may not have been as successful in negotiating service contracts with conferences as intended by Congress. In this regard, the Commission has received complaints from shippers' associations concerning their attempts to negotiate service contracts with conferences or access such contracts as similarly situated shippers.

A Commission rulemaking might serve to clarify carriers'/conferences' obligations with regard to their negotiations with shippers' associations. Such a rulemaking might also consider the obligations of carriers/conferences in their negotiations with NVOCCs with respect to service contracts. The Commission is accordingly seeking comment on these issues. In order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, commenters are urged to address the following specific questions.

1. Have shippers' associations experienced difficulties in negotiating service contracts with carriers or conferences? If so, what have been the reasons?

2. What specific mechanism could be established to ensure that carriers fulfill their obligation to negotiate with shippers' associations?

3. Should the Commission develop procedures to ensure that conferences deal fairly with NVOCCs with respect to service contracts? If so, what specific mechanism is proposed?

5. Service Contracts Based on a Percentage of Business

Background

The essential terms of a service contract must include the minimum volume of cargo to be tendered to the carrier or conference. 46 U.S.C. app. 1707(c)(3). The 1984 Act does not, however, provide a definition for the term "minimum volume." Some have advocated an interpretation of "minimum volune" to mean a fixed percentage of a shipper's total cargo destined to a particular geographic area. In Docket No. 84–21, Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts, 49 FR 45,364 (November 15, 1984), the FMC determined that the term "minimum volume" meant a fixed amount of shipper's total cargo, such as a given number of containers, revenue tons, or weight tons. The Commission deemed service contracts specifying a fixed percentage of cargo to be loyalty contracts,[1] and concluded that permitting fixed percentage service contracts would be inconsistent with Congress' treatment of loyalty contracts in the 1984 Act. The Commission's existing service contract regulation concerning the miminum quantity of cargo specified in a service contract's essential terms, 46 CFR 581.5(a)(v), therefore, prohibits a cargo commitment from being stated as a fixed percentage of a shipper's cargo.

Discussion

Some shippers have indicated a desire to be able to enter into a service contract where the specified service contract minimum quantity is expressed as a fixed percentage of their cargo.[2] Smaller shippers, in particular, have commented that a fixed amount of cargo requirement precludes them from entering into service contracts. Unlike a large shipper, a smaller shipper may not have sufficient cargo to meet any fixed amount cargo commitment. Moreover, to the extent shippers large or small may not be in a position at any given point in time to know with contractual certainty the amount of cargo they will be shipping over a future period, percentage term contracts could offer them more commercial flexibility.

Service contracts based on a percentage of business, in lieu of or in addition to a specific volume commitment, could offer a solution to a shipper whose future business volume is uncertain. A shipper entering a new market or marketing a new product, for example, may prefer a service contract minimum quantity based on a fixed percentage of its cargo. In such a case, volume and price of product are unpredictable. Hence, while a shipper might be hesitant to commit a specific number of containers, the shipper might be willing to commit a specified percentage of its cargo. The shipper and carrier which are party to the service contract might both benefit if business levels in the new market were to develop.

Alternatively, a shipper whose future business volume is uncertain may find that a service contract based upon a fixed minimum amount of cargo, plus a fixed percentage of its total cargo once the fixed minimum amount has been tendered, provides the flexibility needed for dealing with the uncertainty. A service contract based solely upon a fixed amount of cargo may not provide such flexibility. Furthermore, a service contract based on a fixed minimum amount of cargo, plus a fixed percentage of a shipper's total cargo, may be distinguishable from one based *solely* upon a fixed percentage of cargo in terms of any loyalty contract analysis.

Other than the possible legal impediment, an additional concern with a service contract where the minimum volume is based upon a percentage of a shipper's total cargo volume is that it could be difficult for a carrier to verify that its share of a shipper's cargo moving under a given service contract is at least as great as the specified fixed percentage of the total of that shipper's cargo moving in a trade.

The issue of allowing service contracts to be based on: (1) A percentage of a shipper's total cargo; and/or (2) on a fixed amount of cargo plus a specific fixed percentage commitment after the cargo volume tendered exceeds the fixed amount, is significant and complex both from a legal and economic perspective. Therefore, in order to provide the Commission with the most complete information available and to enable it to make an informed judgment in this matter, interested persons are invited to comment generally about permitting service contracts based on a percentage of business and on the following specific questions.

1. Can an ocean common carrier or conference and a shipper or shippers' association be legally permitted under the 1984 Act to enter into a service contract that specifies as the service contract's minimum volume (a) a fixed percentage of the shipper's or shippers' association's total cargo, or (b) a combination of a fixed amount of cargo plus a percentage of the shipper's remaining cargo moving in the trade?

2. What are the specific commercial advantages or disadvantages of requiring service contracts to be based on a fixed amount of a cargo?

3. What are the specific commercial advantages or disadvantages of permitting contracts to be based on a percentage of a shipper's cargo?

6. Conference Ombudsman

Background

Section 5(6)(a) of the 1984 Act, 46 U.S.C. app. 1704(6)(a), provides that each conference agreement must—

(6) Provide for a consultation process designed to promote—

(A) Commercial resolution of disputes, and

(B) Cooperation with shippers in preventing and eliminating malpractices;

(7) Establish procedures for promptly and fairly considering shippers' requests and complaints.

Section 11(a) of the 1984 Act, 46 U.S.C. app. 1710(a), provides that any person may file with the Commission a sworn complaint alleging a violation of the 1984 Act. Each conference agreement must also, at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members, 46 U.S.C. app. 1704(b)(4).

Discussion

A proposal to require conferences to establish an ombudsman or other neutral entity to address shipper complaints could provide an alternative to complaints and neutral body self-policing. Therefore, in the interest of improving the means by which shipper complaints are addressed, the Commission is seeking comment on a requirement that every conference establish an ombudsman or other neutral entity which would address complaints from shippers within a certain period of time, *e.g.*, 45 days of receipt. Commenters are urged to suggest rule language in addressing the issue.

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[1] The 1984 Act, in section 3(14), 46 U.S.C. app. 1702 3(14), defines a loyalty contract as * * *

* * * a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing *all or a fixed portion* of its cargo to that carrier or conference. (Emphasis added).

[2] *See* for example, the FMC's section 18 Report on the Shipping Act of 1984, pp. 643–644, and the Report of the Advisory Commission on Conferences in Ocean Shipping, p. 147.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-14019 Filed 6-12-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-65; DA 92-602]

Requested Modification of Pay-Per-Call Rules

AGENCY: Federal Communications Commission.

ACTION: Petition for rulemaking; request for comments.

SUMMARY: In response to a petition, we are soliciting public comment on a request for clarification and modification of the Commission's pay-per-call rules. Specifically, the Petition, which was filed on April 30, 1992, by the National Association of Attorneys General and thirty-four states, seeks the issuance of an order clearly stating the application of pay-per-call rules to certain aspects of standard inward WATS (800 Number) services. Though the Petition was initially filed in CC Docket 91-65, this serves as notice that the Petition will be treated as a petition for rule making (RM-7990), rather than as a filing in CC Docket 91-65.

DATES: Comments must be filed on or before July 8, 1992, and reply comments must be filed on or before July 28, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas David, (202) 632-4887, Common Carrier Bureau, Enforcement Division.

SUPPLEMENTAL INFORMATION:

Public Notice

Released: Petition for Clarification and Modification of Pay-Per-Call Rules Filed by National Association of Attorneys General To Be Treated as a Petition for Rule Making, RM-7990

Comment Date: July 8, 1992.

Reply Comments Due: July 28, 1992.

The 900 Number Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General (NAAG) and thirty-four states filed a Petition for Clarification and Modification of the Commission's pay-per-call rules on April 30, 1992. The Petition was filed in CC Docket 91-65, Policies and Rules Concerning Interstate 900 Telecommunications Services. The Petition requests that the Commission issue an order (1) clearly stating that the pay-per-call rules apply when such services are offered over standard inward WATS (800 Number) services and (2) prohibiting carriers from providing standard inward WATS service for services which bill customers through the use of either tone-generation technology, automatic number identification (ANI) or billing detail information.

The Petition will be treated as a petition for rule making rather than as a filing in CC Docket 91-65. Parties wishing to comment on this matter may do so no later than July 8, 1992. Replies may be filed no later than July 8, 1992. All filings concerning this matter should refer to RM-7990.

Copies of the Petition and any subsequently filed documents in this proceeding may be obtained from Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. The Petition and documents are also available for inspection and copying during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

For further information, contact Thomas David at (202) 632-4887.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13917 Filed 6-12-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cherry Hill Planning Area, Sequoia National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to propose site specific projects and vegetative treatments for managing vegetation and resources on a landscape basis in the Cherry Hill Planning Area, Cannell Meadow Ranger District, Sequoia National Forest, Tulane County, California. The Sequoia National Forest Land and Resource Management Plan has been prepared.

ADDRESSES: Submit written comments and suggestions to Gene Blankenbaker, District Ranger, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Ray Huber, District Timber Management Officer or to Sue Porter, Sale Planner, Cannell Meadow Ranger District, P.O. Box 6, Kernville, California 93238, telephone (619) 376–3781.

SUPPLEMENTARY INFORMATION: The Cherry Hill Planning Area encompasses approximately 25,000 acres of National Forest land extending from the Kern River on the west to the ridgeline between Sherman and Sirretta Peaks on the east, from the Horse Meadow vicinity in the south to Brush Creek on the north; it includes parts of Townships 22 and 23 South, and Ranges 33 and 34 East, Mount Diablo Meridian.

A range of alternatives for this planning areas will be considered, One of these will be a no action/no change alternative, essentially leaving current land management in place. Other alternatives will propose site specific projects and vegetative treatments designed to provide for recreation opportunities, habitat for wildlife and fisheries, timber harvesting, livestock summer forage, and watershed protection.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect,and cumulative effects and
6. Determining potential cooperating agencies and task assignments.

The draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1992. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the area encompassed by the Cherry Hill Planning Area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts, *City of Angoon* v. Hodel, 803 F, 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS shall be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement.

After the comment period for the draft EIS ends, the comments received will be analyzed and considered by the Forest Service in the preparation of the final EIS. The final EIS is scheduled to be completed by April 1993.

Dated: June 4, 1992.

Sandra H. Key,

Forest Supervisor.

[FR Doc. 92–13923 Filed 6–12–92; 8:45 am]

BILLING CODE 3410-11-M

Forest Legacy Program Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice; availability of final guidelines.

SUMMARY: The forestry title of the 1990 Farm Bill authorized a new Forest Legacy Program, the purpose of which is to identify and protect environmentally important private forest lands that are threatened by present or future conversion to nonforest uses. The Forest Service hereby gives notice that guidelines are now available for implementing an initial Forest Legacy Program in Fiscal Year 1992.

EFFECTIVE DATE: June 15, 1992.

ADDRESSES: Single copies of the guidelines for implementing the Forest

Legacy Program may be obtained by writing the Director, Cooperative Forestry Staff (CF), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Ruth McWilliams, Cooperative Forestry Staff, (202) 205-1394, or David Sherman, Lands Staff, (202) 205-1362.

SUPPLEMENTARY INFORMATION: Section 1217 of title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (104 Stat. 3528), known as the 1990 Farm Bill, directs the Secretary of Agriculture to establish a Forest Legacy Program in cooperation with State, regional and other units of government. The Act authorizes the Secretary to acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy purposes. This authority is in addition to authorities granted under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428(a)).

The Secretary is directed to establish initial programs in Fiscal Year 1992. One of the initial programs will be in New York, New Hampshire, Vermont, and Maine. Another initial program will be in Washington State. Language in the appropriation bill for Fiscal Year 1992 also gives the State of Massachusetts and opportunity to join the program in 1992. Expansion of the program beyond the initial States is dependent on future appropriations and designation of any additional State Forest Legacy Program by the Secretary of Agriculture.

To implement the initial programs within Fiscal Year 1992, the agency has developed guidelines consisting of (1) eligibility criteria for determining which geographic areas may be designated as Forest Legacy Areas under the initial programs; (2) procedures for analyzing, documenting, and attaining public involvement in the assessment of the need for a Forest Legacy Program; and (3) procedures for setting up a Forest Legacy Program in States.

The guidelines will be used by State agencies, State Forest Stewardship Coordinating Committees, and the Forest Service in implementing the initial programs and testing the procedures for implementation of the program nationwide.

Draft implementation guidelines were provided for review and comment to about 3,000 individuals and organizations including the Governors through State forestry agencies, and to land trusts, conservation organizations, forest industry groups, landowners, and other organizations interested in the Forest Legacy Program. Public notice of the availability of draft guidelines also was given on July 5, 1991. An extension of the public comment period was given, and comments were received through October 16, 1991. Public comments were considered in writing the present guidelines.

Dated: June 9, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-13995 Filed 6-12-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Associated Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Associated Electric Cooperative, Inc. (AECI) to modify its New Madrid Power Plant to burn low sulfur coal. The FONSI is based on a borrower's environmental report (BER) prepared by AECI and submitted to REA covering the proposed modifications. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the AECI BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Robert M. Quigel, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: The New Madrid Power Plant is located in the St. Jude Industrial Park, in New Madrid County, Missouri, south of the town of New Madrid along the Mississippi River. The proposed project consists of modifications necessary to switch from burning high sulfur Illinois coal to burning low sulfur Wyoming coal. All modifications will take place within the St. Jude Industrial Park. The project entails the following modifications:

(1) Construction of a rail spur from the existing St. Louis and Southwestern Railroad track, located on the western side of the St. Jude Industrial Park, into the power plant site. The length of the spur is estimated to be 2.5 miles and will be located entirely within the industrial park boundaries;

(2) Construction of fuel handling and storage consisting of rotary car dumpers, railcar storage area, long- and short-term coal storage, a conveyance system for sorting, stacking and reclaiming coal, and coal crushing facilities;

(3) Changes to the existing plant boilers and ductwork;

(4) Addition of a new dry ash handling system; and

(5) Construction of a new ash disposal pond.

Alternatives considered to the project as proposed were no action, installation of flue gas desulfurization at the plant, and the purchase of emission allowances. REA has considered these alternatives and concludes that converting the New Madrid Power Plant to operate by firing low sulfur coal is the preferred alternative to phase in plans for complying with the Clean Air Act Amendments of 1990 (40 U.S.C. 7401 to 7671).

Based on analysis of the adopted BER, REA has concluded that the construction and operation of the proposed fuel conversion modifications will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, cultural resources, or flora and fauna. In addition, REA has determined that the construction and operation of the fuel conversion modifications will have no effect on federally-listed threatened and endangered species or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction and use of the proposed project has been identified.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Charles Means, P.O. Box 754, Springfield, Missouri 65801.

Dated: June 2, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92-13936 Filed 6-12-92; 8:45 am]

BILLING CODE 3410-15-F

Soil Conservation Service

Talofofo Village Watershed, Guam; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Talofofo Village Watershed, Territory of Guam.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Soil Conservation Service, suite 602, GCIC Building, 414 W. Soledad Avenue, Agana, Guam 96910, telephone (671) 472–5940.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these finding, Joan B. Perry, Director, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project provides a plan for agricultural flood prevention. The planned works of improvement include three grass-lined waterway totalling 3,374 linear feet and installation of 200 feet of buried pipeline to a cobble filled drain.

The Notice of a Finding of No Significant impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, Guam government, and local organizations and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joan B. Perry, Director, at the above address or phone number.

No administrative action on implementation of the proposal will be taken until 30 days after date of this publication in the **Federal Register**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: June 1, 1992.

Joan B. Perry,

Director.

[FR Doc. 92–13922 Filed 6–12–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813, A–583–816]

Initiation of Antidumping Duty Investigations: Certain Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone, (202) 377–1174.

INITIATION OF INVESTIGATIONS:

The Petitions

On May 20, 1992, we received petitions filed in proper form by Flowline Division of Markovitz Enterprises, Inc. (petitioner). In accordance with 19 CFR 353.12, the petitioner alleges that certain stainless steel butt-weld pipe fittings (stainless butt-weld pipe fittings) from the Republic of Korea (Korea) and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petitions because it is an interested party, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

The products subject to these investigations are stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Stainless steel butt-weld pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Stainless steel butt-weld pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The stainless steel butt-weld pipe fittings subject to these investigations are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Korea

Petitioner based its estimates of United States price (USP) on quoted prices for stainless steel butt-weld pipe fittings, f.o.b. port of export. Petitioner made no adjustments to USP for movement expenses. No further adjustments were made to the quoted USPs.

Petitioner's estimate of foreign market value (FMV) is based on constructed value (CV) because petitioner was unable to obtain pricing information for the subject merchandise in either the home market or a third country.

The cost of raw materials was based on petitioner's own consumption at prices in Korea reported in a November 1991, antidumping petition filed with the

Department. Petitioner based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Korea. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing are based on petitioner's actual experience during 1991.

Pursuant to section 773(e) of the Act, petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to the cost of manufacturing (COM).

Taiwan

Petitioner based its estimates of USP on quoted prices for stainless steel butt-weld fittings, c.i.f. port of U.S. entry. Petitioner deducted foreign inland freight, ocean freight, marine insurance and brokerage charges from the quoted USP. No further adjustments were made to USP.

Petitioner's estimate of FMV is based on CV because petitioner was unable to obtain pricing information for the subject merchandise in either the home market or a third country.

The cost of raw materials was based on petitioner's own consumption at prices in Taiwan reported in a November 1991, antidumping petition filed with the Department. Petitioner based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Taiwan. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing are based on petitioner's actual experience during 1991.

Pursuant to section 773(e) of the Act, petitioner added the statutory minima of ten percent for general expenses and eight percent for profit to the COM.

Based on the above information, petitioner alleges dumping margins ranging from 11.6 percent to 21.2 percent for stainless butt-weld fittings from Korea, and 14.5 percent to 76.2 percent for stainless butt-weld fittings from Taiwan.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of the subject merchandise from Korea and Taiwan.

Initiation of Investigations

We have examined the petitions on stainless butt-weld fittings from Korea and Taiwan, and have found that the petitions meet the requirements of 19 CFR 353.12. Therefore, we are initiating antidumping duty investigations to determine whether imports of stainless butt-weld fittings from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the International Trade Commission

The ITC will determine by July 6, 1992, whether there is a reasonable indication that imports of stainless butt-weld fittings from Korea and/or Taiwan are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-14022 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DS-M

Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 18, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand. We have now completed that review and determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 8.51 percent *ad valorem*.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki, Sylvia Chadwick, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1990, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 9413) the preliminary results of its administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand (54 FR 19130; May 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, two producers/exporters, NMB Thai Ltd. (NMB) and Pelmec Thai Ltd. (Pelmec), and twelve programs: Electricity Discounts for Exporters; Investment Promotion Act (IPA) Sections 31, 28, and 36(1); Tax Certificates for Exporters; Export Packing Credits; Rediscount of Industrial Bills; Export Processing Zones; IPA Sections 33 and 36(4): Reduced Business Taxes for Producers of Intermediate Goods for Export Industries; and International Trade Promotion Fund.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from the respondents and a rebuttal comment from the petitioner.

Comment: Respondents contend that the Department's failure to adjust the benefit calculation to account for the difference between the export price and the import value of the subject merchandise will lead to overcollection of countervailing duties. Therefore, it is contrary to U.S. law (*see* 19 U.S.C. 1303(a)(1)), to GATT Article VI(3), and administrative precedent (*see*, Preliminary Results of Administrative Review—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Singapore (56 FR 9631; March 7, 1991)).

Respondents point out that, generally, the export price of the merchandise leaving the country of origin is identical to the import value of the merchandise entering the United States; in those instance, the methodology applied by the Department results in the collection of countervailing duties "equal" to the

amount of the subsidy. In the instant case, however, shipments of ball bearings from NMB or Pelmec leave Thailand at an F.O.B. price which is lower than the value at which the merchandise enters the United States. This higher value is due to the parent company's mark-up imposed on the merchandise in a back-to-back intercompany sales transaction. Therefore, respondents argue that the Department should calculate the countervailing duty rate for the IPA benefits and the electricity discount by multiplying the subsidy rate calculated on the basis of total exports by the value of the merchandise exported to the United States (without mark-up). This computes the amount of subsidies bestowed on the merchandise exported to the United States. This amount should then be divided by the import value of the same merchandise (including the mark-up), which is the basis for the duty collection by the U.S. Customs Service. The benefit for the tax certificates would be calculated in the same manner. Respondents claim that this calculation methodology will allow the Department to collect an amount equal to the bounty or grant found on the subject merchandise.

Petitioner argues that the accuracy of respondents' proposed calculation method depends upon the accuracy of the allocation of subsidies to U.S. exports as opposed to all exports. Petitioner claims that the Thai export price is merely an inter-company transfer price, and that the Thai producers have not shown that the mark-up on shipments to other countries is equal to the mark-up on shipments to the United States. Petitioner contends that because transfer prices may vary by country of destination, the allocation of subsidies to exports to different countries may be skewed. Therefore, following the methodology proposed by respondents, the Department cannot insure that the full amount of subsidies bestowed on U.S. exports would be offset. Therefore, petitioner urges the Department to apply the same calculation methodology used in the preliminary determination to calculate the final duty rate.

Department's Position: We have reexamined our calculations and have determined that the unique circumstances of this case warrant a modification to the subsidy calculation. First, in this case, there are two F.O.B. export prices for the same sale: the one on which subsidies are applied for and received by NMB and Pelmec, and the one which includes Minebea Japan's mark-up and which is the value listed on the NMB or Pelmec invoice accompanying the merchandise to the United States. At verification, NMB and Pelmec demonstrated that their accounting systems are set up to track the mark-up for each individual shipment of bearings via back-to-back invoices that are identical except for price. When NMB and Pelmec have a shipment ready for export, they will electronically transmit a copy of the invoice to Minebea Japan, who then adds the mark-up amount and transmits the invoice back to Thailand. This marked-up invoice is then cut in Thailand and packed with the shipment for export from Thailand. Even though Minebea Japan determines the mark-up, the merchandise is shipped from Thailand to the United States accompanied by the marked-up invoice.

Because there is an exact one-to-one correlation between the invoice which reflects the price on which the subsidies are received and the invoice which reflects the marked-up price that accompanies each shipment, and because the merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise, the Department has determined that it is possible to make an adjustment to the subsidy rate so that the amount of countervailing duty collected will reflect the amount of subsidies bestowed.

Accordingly, we have divided the F.O.B. value of the exports of the subject merchandise before the inter-company transaction (before mark-up) by the value of the same merchandise as it entered the United States (after mark-up). This results in a ratio which reflects the difference in the export and import values. We then multiplied this ratio by the subsidy rate to obtain an adjusted rate of 8.51 percent *ad valorem*. Since the methodology applied by the Department is based on the existence of the one-to-one invoice tracking system for U.S. shipments, it is not necessary for the Department to allocate subsidies by country and petitioner's objections are misplaced.

Final Results of Review

As a result of our review, we determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 8.51 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 8.51 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 8.51 percent of the f.o.b. invoice price on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this invoice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 5, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, constitute the following as outlined below.

Ball Bearings, Mounted or Unmounted, and Parts Thereof

These products include all antifriction bearings which employ balls as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction balls (Tariff Schedules of the United States Annotated [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA item 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA item 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA item 681.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80.

8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 92-14023 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-819]

Termination of Countervailing Duty Investigation; Portable Seismographs From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Susan Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2239 or (202) 377-1442, respectively.

Case History

Since publication of the Department's preliminary countervailing duty determination (57 FR 20464; May 13, 1992), we verified information submitted in the responses by the Government of Canada, the Government of the Province of Ontario, and one of the two producers/manufacturers/exporters of the subject merchandise.

Scope of Investigation

The products covered by this investigation are portable seismographs from Canada. Portable seismographs are used by the mining, construction, and blasting industries to measure the ground and air vibrations produced by man-made blasting in compliance with seismograph standards established by the U.S. Bureau of Mines. The basic components and ranges of measurement are: ground peak particle velocity (.02 to 10 inches per second); ground motion frequency (2 to 100 Hz); direction of motion [3 orthogonal axes (L,T,V)]; airblast level (100 to 140 dBL); airblast overpressure (1/10,000 to 1/100 psi); and airblast frequency (2 to 200 Hz). Earthquake, nuclear, and reflection/refraction seismographs are not included in the scope of investigation. Portable seismographs are currently provided for in subheading 9015.80.6000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Termination of Investigation

In a letter submitted June 1, 1992, petitioner notified the Department that it was withdrawing its February 12, 1992 petition, and requested that the Department terminate the countervailing duty investigation.

Under section 19 CFR 355.17(a), the Department may terminate an investigation after the withdrawal of the petition by the petitioner, after notifying all parties to the proceeding and after consultation with the International Trade Commission (ITC). The Department may not terminate an investigation unless it concludes that the termination is in the public interest. We have notified all parties to the proceeding and consulted with the ITC concerning the potential termination of this investigation. Based upon those contacts and our assessments of the public interest, we have concluded that termination of the investigation is in the public interest. Accordingly, we are terminating the countervailing duty investigation of portable seismographs from Canada. This action is taken pursuant to section 704(a)(1) of the Tariff Act of 1930, as amended.

Dated: June 5, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13968 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DJ-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92-00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to World International Investments Corp. ("WIIC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*—All Products.
2. *Services*—All Services.
3. *Technology Rights*—Technology rights, including, but not limited to, patents and trademarks, that relate to Products and Services.
4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)*—Export Trade Facilitation Services, including consulting, research on overseas markets, market analysis and strategy, collection of information on trade opportunities, arranging for exporter risk coverage with the Export-Import Bank, legal assistance, services related to compliance with customs requirements, transportation, facilitating the formation of shippers' associations, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, WIIC may:

1. Export specific Products and/or Services in response to specific orders and contact individual Suppliers as to competitive prices, quality, and availability;
2. Provide and arrange for Export Trade Facilitation Services;

3. Exchange information only in one-on-one discussions with specific Suppliers on specific orders or market conditions;

4. Enter into exclusive licensing and distributorship agreements with Suppliers for the export of Products, Services, and Technology Rights to the Export Markets;

5. Allocate export sales or divide the Export Markets among Suppliers for the sale, licensing or distribution of Products, Services, and Technology Rights;

6. Establish the price of Products, Services, and Technology Rights for sale, licensing or distribution in the Export Markets;

7. Negotiate and manage licensing agreements for the export of Technology Rights; and

8. Collect information on trade opportunities in the Export Markets and distribute such information to clients.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services, or Technology Rights.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 9, 1992.

Linda F. Powers,

Deputy Assistant Secretary for Services.

[FR Doc. 92-14021 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Steller Sea Lions; Buffer Area Exemption

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of exemption determination.

SUMMARY: The Alaska Regional Office, NMFS, has received and denied a request from Alaska Maritime Tours for an exemption to the 3-nautical-mile buffer zone established around Sugarloaf Island, a principal Steller sea lion rookery.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802 (907-586-7233).

SUPPLEMENTARY INFORMATION:

Background

On November 26, 1990, NMFS published a final rule (55 FR 49204) that listed the Steller (northern) sea lions as a threatened species under the Endangered Species Act (16 U.S.C. 1531-1543). This rule contained several protective regulations codified at 50 CFR 227.12(a), including the establishment of buffer zones around 32 sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. These buffer zones prohibit the approach of any vessel within 3 nautical miles of these rookeries or the approach of any person on land not privately owned within one-half statutory mile or within sight of the listed rookery sites, whichever is greater.

The final rule gives the Director, Alaska Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, the authority to grant exemptions to the prohibitions of the rule (50 CFR 227.12 (a)(6)). Exemptions allowing entry into buffer zones may be granted only if (1) the activity will not have a significant adverse impact on Steller sea lions, (2) the activity has been conducted historically and traditionally in the buffer zones, and (3) there is no feasibly available and acceptable alternative to, or site for, the activity.

On March 21, 1992, Mr. W.E. Murphy, Alaska Maritime Tours, submitted to the Alaska Region, NMFS, a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Sugarloaf Island in the Barren Islands (58° 53.0′N, 152° 02.0′W) in order to observe sea bird colonies on these islands. The information supplied by Mr. Murphy indicates that a single tour boat would visit the islands on a maximum of nine days in 1992. Alternatively, Mr. Murply requested an examption to the buffer zones around East and West Amatuli islands only, which would bring the tourists no closer than one mile to the Sugarloaf Island rookeries.

On June 5, 1992, the Alaska Regional Director, NMFS, denied the request of Alaska Maritime Tours because it does not meet the legal requirements for granting an exemption. Human disturbance at the rookery sites has the potential for animal stampedes and mortality of pups. Also, the activity has not been conducted historically and traditionally in the buffer zone, and alternative sites are available for viewing sea birds in addition to viewing Steller sea lions at haulouts sites rather than at the Sugarloaf Island rookery.

Dated: June 5, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-14020 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, DOC.

ACTION: Issuance of modification to permit No. 638 (P319A).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 638 issued to the Dolphin Biology Research Associates, Inc., 163 Siesta Drive, Sarasota, Florida 34242 on July 14, 1988, is modified to allow up to 3000 Atlantic Bottlenose dolphins (*Tursiops truncatus*) to be inadvertently harassed (by: (a) Approach closer than 50 yards; or by (b) showing signs of disruption of normal behavior no matter what the distance) during photographic identification censuses, behavior observations, underwater acoustic recordings, controlled playback experiments of low frequency sounds, and to examine the potential behavioral responses to those sounds.

This modification became effective upon signature.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141).

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-13928 Filed 6-12-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of scientific research permit no. 598 (P77#28).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals (50

CFR part 216), scientific research permit no. 598 issued to the Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, Washington, 98115, is modified to include an additional take of up to 600 fur seals on the Pribilof Islands of which 100 (50 female/pup pairs) can be marked with hair bleach, 100 adult females can be tagged with All-Flex numbered tags, and 400 can be inadvertently harassed during these activities and during recording and playback of mother/pup vocalizations.

This modification became effective upon signature.

Documents pertaining to this Modification and Permit, as amended, are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221);

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: June 9, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–13927 Filed 6–12–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Establishing Large Lot Transactions in Currency and Currency Cross-Rate Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new contract market rule.

SUMMARY: The Chicago Mercantile Exchange, Inc. ("CME" or "Exchange") has submitted a proposed rule to the Commodity Futures Trading Commission ("Commission") for its review and approval. The proposed rule would establish large lot transactions in currency and cross-rate futures contracts.

Acting pursuant to the authority delegated by Commission regulation 140.96, the Director of the Division of Trading and Markets ("Division"), with the concurrence of the General Counsel, has determined to publish the CME's proposal for public comment on behalf of the Commission. The Division believes that publication of the proposed rule is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before July 15, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Regan, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letter dated May 8, 1992, the CME submitted proposed rule 554 for review by the Commission pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission regulation 1.41(b). The proposed rule would provide for the immediate execution of large lot trades in currency and cross-rate currency futures contracts at a single price for a minimum number of contracts, or multiples of that minimum.

The CME has stated that its proposal is intended to provide an alternative to existing ways of handling large currency futures trades and to strengthen the competitive position of the CME's currency markets relative to that of the interbank market. Two members of the CME Board of Directors opposed the adoption of the large lot execution procedures based upon their view that a large lot rule for currency futures should be designed in a manner similar to the CME's Standard and Poor's 50 Stock price Index futures contracts ("S&P 500 LOX") rule.

The CME's large lot proposal differs from its S&P 500 LOX rule in two notable respects. First, the large lot currency proposal would provide for two different markets in the same contract, one for large lot trades and one for other trades. Second, the CME proposal does not contemplate off-floor negotiations of orders in the manner provided for in the S&P 500 LOX rule.

II. Request for Comments

Acting pursuant to the authority delegated by Commission regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule for public comment. The Commission request comments on any aspect of proposed rule 554 that members of the public believe may raise issues under the Act or Commission regulations, including, for example, those issues previously identified by the Commission as pertinent to large order execution procedures [1] and a prior large lot proposal from another futures exchange.[2]

Copies of the CME submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or comments on the proposed regulation should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date. Issued in Washington, DC on June 9, 1992.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 92–13932 Filed 6–12–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Supplemental Environmental Assessment (EA) for Lightweight Exoatmospheric Projectile (LEAP) Test Program

AGENCY: Strategic Defense Initiative Organization (SDIO), DoD.

ACTION: Proposed Modifications to the Lightweight Exoatmospheric Projectile (LEAP) Test Program.

SUMMARY: Pursuant to Council on Envionmental Quality Regulations (40 CFR parts 1500–1508) for implementing

[1] See 55 FR 50,267 (Dec. 5, 1989); 55 FR 23,127 (June 6, 1990).

[2] The Division previously published a proposal from the Commodity Exchange, Inc. ("Comex") which would have established procedures for large lot transactions in gold futures contracts. FR 2506 (January 23, 1991). The Division later requested further information from Comex on May 3, 1991.

the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et. seq.), and Department of Defense Directive 6050.1, the Strategic Defense Initiative Organization (SDIO) has conducted an environmental assessment of the potential environmental consequences of modifications to the Lightweight Exoatmoshperic Projectile (LEAP) Test Program. The original environmental assessment of the LEAP Test Program, prepared by SDIO, resulted in a Finding of No Significant Impact (FONSI) on July 18, 1991.

Since that FONSI, modifications to the program have been made that include: changes to existing launches, and adding two new launches to the program. Activities to support modifications will occur at two additional private contracting facilities not addressed in the original EA. Also, another type of liquid rocket propellant has been added to the program to support technology evaluation.

Background

The LEAP Test Program was established to demonstrate and evaluate advanced technology to determine whether an exoatmospheric interceptor is feasible. To reach this determination, the LEAP program office at SDIO has established a program of design, fabrication, ground test, and flight testing of potential technologies to meet program goals. Since preparation of the LEAP EA and FONSI (July 1991), SDIO has identified a need to modify the LEAP Test Program.

Originally, the LEAP Program consisted of six test flights. The first four flights, LEAP–1–2–3, and–4 were (and are) planned to occur at White Sands Missile Range (WSMR), New Mexico. Three of the test flights are single-rocket launches using Aries I Launch vehicles. The fourth WSMR test flight is a two-rocket launch using Aries II Launch Vehicles. Two of the test fights, LEAP–5 and LEAP–6, were (and are) planned to occur at Kwajalein Missile Range (KMR), U.S. Army Kwajalein Atoll (USAKA), and Wake Island. The Test flights are two-rocket launches using an Aries II Launch Vehicle to launch the LEAP projectile from KMR and a Castor IVA Target Launch Vehicle to launch the Target from Wake Island.

Modifications to the original program include the following:

The flight trajectory for LEAP–3 test flight at WSMR has been modified to emulate the trajectories for LEAP–1 and LEAP–2 at WSMR;

LEAP launches at Meck Island at KMR, in USAKA are now planned to occur from the HEDI Launch Facility on the southern portion of Launch Hill, rather than the ERIS site as previously planned;

An additional launch, LEAP–X, is planned to occur at KMR. The Flight test is a single-rocket from Mech Island using the Aries II Launch Vehicle;

The Advanced Liquid Axial Stage (ALAS) liquid propellant rocket motor has been added as the LEAP axial propulsion system for the LEAP–X and LEAP–6 flights at KMR. The system will include the use of chlorine pentafloride (ClF_5) as the liquid oxidizer;

An additional Launch, LEAP–7, is planned to occur at KMR. The test flight is a two rocket launch using the Aries II launch Vehicle (KMR) and Castor IVA Target Launch Vehicle (Wake Island), and;

The Advanced Solid Axial Stage (ASAS) solid propellant axial motor has been added as the LEAP axial propulsion system for the LEAP–7 flight.

Activities to support the LEAP program are still planned to occur at the facilities identified in the LEAP EA. In addition, component assembly activities will be performed at Aerojet, Sacramento, California and Thiokol Corporation, Elkton, Maryland.

The potential for environmental impacts was determine through an analysis of modifications of, and additions to, the LEAP program and the facilities where these activities are planned to occur. All significant changes to the program occur at KMR. A summary of the environmental resources at KMR is presented in the LEAP Supplemental EA and includes: physical setting and land-use; geology and water resources; air quality; noise; biological resources; threatened and endangered species; cultural resources; infrastructure; hazardous materials and wastes; and public health and safety.

The methodology consisted of identification of potential environmental issues and a determination of potential significance. For any impacts from the proposed action that could potentially be significant, it was determined whether mitigation measures could be implemented to reduce the impacts to less than significant levels.

Findings

All potentially significant impacts from modifications to LEAP Test Program ground, preflight, and flight test activities will be precluded by implementing standard engineering practices, planned safety measures, and the mitigation measures outlined in the LEAP Test Program Environmental Assessment (July 1991) and the USAKA EIS (August 1989).

All LEAP Test Program activities will be conducted according to operational criteria or on-going activities at White Sands Missile Range, USAKA, and Wake Island. The modifications to the LEAP Test Program will not result in any cumulative impacts, or significant irreversible or irretrievable commitments of resources. The analysis in this EA demonstrates no conflicts with Federal, regional, state, local or Native American Tribe land use plans, policies, or controls. All activities associated with this program occur at existing facilities used for activities similar to the testing planned for this program. Private contractors supporting the test program will use existing facilities and structures to support their activities.

The analysis indicates no potentially significant impacts would occur as a result of implementing the proposed program modifications, or the no action alternative. The no action alternative is defined as conducting the LEAP Test Program as defined in the July 1991 LEAP EA, but precludes gathering significant data that SDIO has deemed necessary for full implementation of its objectives.

FOR FURTHER INFORMATION CONTACT: Mr. Crate J. Spears, SDIO Environmental Coordinator, SDIO/TNE, Washington, DC 20301–7100, (703) 673–1576.

Dated: June 11, 1992.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–14128 Filed 6–11–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on July 23, 1992 and from 8:30 a.m. to 4:30 p.m. on July 24, 1992. The meeting will be held at the Monterey Plaza Hotel, 400 Cannery Row, Monterey, CA. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests, and to complete the biennial report. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and

Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than July 10, 1992.

Dated: June 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13960 Filed 6–12–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Notice of Public Hearings for the Draft Supplemental Environmental Impact Statement for Proposed Disposal of Dredged Material From Naval Air Station Alameda and Naval Supply Center Oakland at the Navy Ocean Disposal Site

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Supplemental Environmental Impact Statement (DSEIS) for proposed disposal of dredged material from Naval Air Station Alameda (NAS) and Naval Supply Center (NSC) Oakland at the Navy ocean disposal site.

The DSEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DSEIS findings and to solicit comments will be held on June 30, 1992, beginning at 7 p.m., in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

The public hearing will be conducted by the Navy and will be a joint hearing with the U.S. Army Corps of Engineers. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by July 13, 1992, to become part of the official record.

The proposed action is for designation of an open ocean site for disposal of material dredged from berths at NAS Alameda and pier and channel areas at NSC Oakland to provide adequate clearance for aircraft carriers and the Navy's modern supply ships. The Navy prepared an EIS in 1990 for the dredging at NAS Alameda and NSC Oakland. As discussed in its Record of Decision, the Navy decided to prepare a Supplemental EIS for the proposed use of a former chemical munitions dumping area as a disposal site for the material to be dredged.

Current analysis and dispersion modelling conducted during preparation of the DSEIS indicates that disposal of sediments at the proposed site would have a negligible impact on marine resources.

Additional information concerning this notice may be obtained by contacting Mr. John Kennedy (Code 20), telephone (415) 244–3713, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066.

Dated: June 11, 1992.

Wayne Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 92–14091 Filed 6–12–92; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: June 26, 1992—9 a.m. to 5 p.m.

ADDRESSES: The Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202–7586. Telephone: (202) 205–2420.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the educational status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On June 26, the Commission will meet in an open session from 9 am to 5 pm. The agenda will be the ongoing public awareness campaign around the country and the work of the Commission in preparing recommendations for the Secretary of Education.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., Washington, DC 20202–7586 from the hours of 8:30 am to 5 pm.

The public is being given less than fifteen days notice of this meeting because of the difficulties encountered in scheduling a meeting of the participants who are essential to the actions described in this notice.

Lanny Griffith,

Assistant Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 92–13956 Filed 6–12–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inviting Grant Applications for Innovative Concepts Program

AGENCY: U.S. Department Of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Department of Energy (DOE), Innovative Concepts Program (InnCon), is soliciting grant proposals for advanced concepts having the potential to reduce the energy and/or environmental costs of waste generation/treatment processes. The concepts must be specific, differ substantially from existing practices or application, and not degrade the quality of the product or service being supplied. Proposed advanced concepts should

have the potential to eliminate, reduce, or utilize gas, liquid, or solid waste streams. The purpose of InnCon is to identify promising new concepts for saving energy or improving energy utilization while improving industrial efficiency and maintaining the quality of the environment. Each proposal submitted will be reviewed and evaluated against established qualifications and evaluation criteria. DOE InnCon allocation will not exceed $300,000 with an intent to award up to 15 grants of approximately $20,000 each. Cost sharing is not mandatory. Grant awards will require innovators to conduct a preliminary technical and market evaluation and to present their concepts to potential sponsors.

ELIGIBILITY: All are eligible except for, Federal Laboratories, Battelle Memorial Institute, their affiliates and employees.

DATES: A solicitation will be available on or about June 8, 1992. Request for copies of the solicitation must be made in writing to: U.S. Department of Energy, Seattle Support Office, Attn: Lisa Barnett, 800 Fifth Avenue, Seattle, Washington, 98104. Proposals are due on August 3, 1992.

ADDRESSES AND FURTHER INFORMATION: U.S. Department of Energy (DOE), Seattle Support Office, Seattle, Washington, 98104, Contact Lisa Barnett, (202) 553-2166).

Issued in Chicago, Illinois on June 2, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92-14018 Filed 6-12-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-182-001; and CP92-415-000]

Florida Gas Transmission Co., Transcontinental Gas Pipe Line Corp. and Florida Gas Transmission Co.; Schedule of Public Scoping Meetings on Environmental Issues for the FGT Phase III Expansion Project

June 10, 1992.

The Federal Energy Regulatory Commission (FERC or Commission) staff hereby announces the schedule of public scoping meetings on the above dockets.

On May 22, 1992, the FERC issued a Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) and Request for Comments on Environmental Issues for the FGT Phase III Expansion Project (NOI) (53 FR 23220) filed in the dockets referenced above. Florida Gas Transmission Company (FGT) is seeking approval to construct and operate about 799.8 miles of loop, replacement, and new pipeline; 89,500 horsepower (HP) of compression at 3 new and 7 existing compressor stations; and metering, regulating, and odorization facilities. The proposed facilities would be located in Louisiana, Mississippi, Alabama, and Florida.

Transcontinental Gas Pipe Line Corporation (Transco) and FGT also jointly propose to construct and operate a new 10,766-HP compressor station and a metering and regulating facility in southern Alabama.

Scoping Meetings

The meetings will be conducted to identify the scope and significance of environmental impact associated with the proposals by FGT and Transco. The meetings are scheduled as follows:

Date	Location	Time
Monday, June 22, 1992	Radisson Hotel, 415 North Monroe Street, Tallahassee, FL 32301, Phone (904) 224-6000.	7 p.m.
Tuesday, June 23, 1992	Best Western Inn, 1125 U.S. Highway 19 North, Chiefland, FL 32626, Phone (904) 493-0663.	7 p.m.
Wednesday, June 24, 1992	Sheraton Inn, 5316 U.S. Highway 19, New Port Richey, FL 34652, Phone (813) 847-9005.	7 p.m.

As referenced in the Commission's May 22, 1992 NOI, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC staff regarding the range of environmental issues and concerns that need to be addressed in the impact analysis.

Persons who would like to make oral presentations at the public scoping meetings should contact the FERC project manager identified below to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available for sign-up at the public meeting. Priority will be given to those persons representing groups.

Further information concerning the public scoping meetings or about the project in general is available from: Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 7312, Washington, DC 20426, Telephone (202) 208-1121.

Organizations and individuals receiving this notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information, including the environmental document, published regarding the FGT Phase III Expansion Project will be sent automatically to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the DEIS will only be distributed to those organizations, local agencies, and individuals who have returned the DEIS Request Form sent out previously with our NOI.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14002 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-578-000 et al.]

Iowa Power, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 5, 1992.

Take notice that the following filings have been made with the Commission:

1. Iowa Power, Inc.

[Docket No. ER92-578-000]

Take notice that on May 26, 1992, Iowa Power, Inc. tendered for filing a

Notice of Cancellation of FERC Rate Schedule Nos. 75 and 78 with Central Iowa Power Cooperative.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket Nos. ER92-376-000, ER92-424-000 and ER92-427-000]

Take notice that on May 27, 1992, Florida Power Corporation (FPC) tendered for filing an amendement to its filing in the above-referenced dockets.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER92-568-000]

Take notice that on May 20, 1992, Minnesota Power & Light Company (MP&L) tendered for filing Notices of Cancellation for the following FERC Rate Schedules:

FERC Rate Schedule No. 0008
FERC Rate Schedule No. 0077
FERC Rate Schedule No. 0101
FERC Rate Schedule No. 0108
FERC Rate Schedule No. 0114
FERC Rate Schedule No. 0117
FERC Rate Schedule No. 0130
FERC Rate Schedule No. 0138
FERC Rate Schedule No. 0139
FERC Rate Schedule No. 0140
FERC Rate Schedule No. 0142
FERC Rate Schedule No. 0143
FERC Rate Schedule No. 0144
FERC Rate Schedule No. 0151
FERC Rate Schedule No. 0152
FERC Rate Schedule No. 0154
FERC Rate Schedule No. 0155
FERC Rate Schedule No. 0157

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. United Illuminating Company

[Docket No. ER92-566-000]

Take notice that on May 20, 1992, United Illuminating Company (UI) tendered for filing Notices of Cancellation of the following Rate Schedules:

FERC Rate Schedule No. 44
FERC Rate Schedule No. 49
FERC Rate Schedule No. 50
FERC Rate Schedule No. 51
FERC Rate Schedule No. 52
FERC Rate Schedule No. 53
FERC Rate Schedule No. 57

Comment date: June 18, 1992, in accordance with Standard Paragraph E end of this notice.

5. James R. Leva

[Docket No. ID-1606-005]

Take notice that on April 16, 1992, James R. Leva (Applicant) tendered for filing a supplemental application to hold interlocking positions under the Federal Power Act. On May 15, 1992 Applicant filed an amendment to its April 16, 1992 filing in this docket.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER92-602-000]

Take notice that on June 1, 1992, New England Power Company (NEP) submitted for filing a Power Sales Contract with the Commonwealth Electric Company for a 30 megawatt sale of capacity and energy from NEP's Bear Swamp pumped storage facility from June 29, 1992 to August 3, 1992. NEP requests waiver of the Commission's regulations to allow this Contract to become effective on June 29, 1992.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. People's Electric Cooperative

[Docket No. ER92-583-000]

Take notice that on May 27, 1992 People's Electric Cooperative (PEC) tendered for filing a letter stating that on or about July 1, 1992 the transmission facilities of PEC will be interconnected with the transmission facilities of Southwestern Power Administration (SWPA) and SWPA's Tupelo Switching Station.

Comment date: June 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER92-604-000]

Take notice that on June 1, 1992, Montaup Electric Company (Montaup or the Company) filed as an informational filing a report titled Conservation and Load Management Annual Report Information Filing, Proposed Surcharge and Projected Revenue Requirements—June 1, 1992—describing the activities performed by Montaup in designing, implementing and monitoring Conservation and Load Management (C&LM) programs as part of a cooperative effort at the state level in Massachusetts and Rhode Island. This informational filing is required under the C&LM clause which was adopted in the settlement agreement in Phase I of Montaup's M-12 rate case in Docket No. ER90-247, as approved by the Commission on January 23, 1991 (54 FERC ¶61,084), and which is contained in Montaup's wholesale rate schedules for services to its retail distribution affiliates, Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) and Newport Electric Corporation (Newport) in Rhode Island. The filing (1) describes the C&LM clause, (2) describes C&LM coordination at the state level, and (3) presents a "true-up" credit of $7.1 million for the 12 months beginning May 1, 1991 and $13.5 million of estimated C&LM costs for the 12 months beginning May 1, 1992.

Under the C&LM mechanism, the adjustment becomes final unless protests are filed or an investigation ordered within 90 days of the filing of the report. The 90-day period allows time for any issues to be resolved. Accordingly, the time for filing protests is set at August 30, 1992.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Company

[Docket No. ER92-606-000]

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M), on June 2, 1992, tendered for filing an adjustment to the monthly demand charge rates for Firm Power supplied by I&M to Wabash Valley Power Association, Inc. (Wabash Valley) under the August 31, 1988 Settlement Agreement (Agreement) between I&M and Wabash Valley. The Commission has previously designated this Agreement as I&M's Rate Schedule FERC No. 76. The demand charge adjustment is based on an historical average of the Producer Price Index as provided for in the Agreement.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and Wabash Valley.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric

[Docket No. ER92-608-000]

Take notice that on June 2, 1992, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated January 31, 1992 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge

from $4,075.67 to $3,823.17 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the monthly Transmission Charge from $4,414.05 to $4,588.37 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $4,179.49 to $4,367.57 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commission's Regulation to permit this proposed increase to become effective January 1, 1992.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East, Binghamton NY 13902.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER92-607-000]

Take notice that on June 2, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a revision to its Rate Schedule for Full Requirements Service to Mt. Carmel Public Utility Company (Mt. Carmel). Under the revision, proposed to be effective June 1, 1992, CIPS will increase slightly the demand charge for service to Mt. Carmel.

CIPS requests an effective date of June 1, 1992 for revision of the Demand Charge and, accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served upon Mt. Carmel Public Utility Company and the Illinois Commerce Commission.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER92-601-000]

Take notice that Entergy Services, Inc. as agent for Entergy Power, Inc. (Entergy Power), on June 1, 1992, tendered for filing an energy sale agreement between Entergy Power and Tennessee Valley Authority. Entergy Power requests an effective date of June 1, 1992, and also requests waiver of the notice requirements under § 35.11 of the Commission's regulations.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER92-595-000]

Take notice that on June 1, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a Rate Schedule For the Interconnection of the California-Oregon Transmission Project (COTP) and the PG&E Electric System. This rate schedule sets forth the rates, terms and conditions under which PG&E offers to the owners of the COTP to interconnect that transmission facility with the PG&E electric system and to operate its system in parallel with the COTP.

Copies of this filing have been mailed to the owners of the COTP; the United States Department of Energy, Western Area Power Administration; the Carmichael Water District; the City of Vernon, California; the San Juan Suburban Water District; the Shasta Dam Area Public Utility District; the Southern Sal Joaquin Valley Power Authority; and the Transmission Agency of Northern California, including the following of its members: The California cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah, the Modesto Irrigation District, the Plumas-Sierra Rural Electric Cooperative, the Sacramento Municipal Utility District and the Turlock Irrigation District; and to the California Department of Water Resources and the California Public Utilities Commission.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14001 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 9694-008

c. *Date Filed:* April 23, 1991.

d. *Applicant:* Power Resources Development Corp. (licensee), Jefferson National Bank (transferee).

e. *Name of Project:* Fine Project.

f. *Location:* On the Oswegatchie River in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682-3300.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Comment Date:* June 29, 1992.

k. *Description of Project:* On April 23, 1991, the transferee filed an application to transfer the license for the Fine Project No. 9694. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B and C

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF

INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027-UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13828 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application*: Transfer of License.

b. *Project No.*: 6962-014.

c. *Date Filed*: April 23, 1991.

d. *Applicant*: Yankee Hydro Corporation (licensee), Jefferson National Bank (transferee).

e. *Name of Project*: Dunn & McCarthy Project.

f. *Location*: On the Owasco Lake outlet in Cayuga County, New York.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682-3300.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Comment Date*: June 29, 1992.

k. *Description of Project*: On April 23, 1991, the transferee filed an application to transfer the license for the Dunn & McCarthy Project No. 6962. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B, and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027-UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13930 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

June 8, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 6786-015.

c. *Date Filed:* April 23, 1991.

d. *Applicant:* Yankee Hydro Corporation (licensee), Jefferson National Bank (transferee).

e. *Name of Project:* Aurelius Avenue Dam Project.

f. *Location:* On the Owasco Lake outlet of the Owasco River in Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Peter C. Kissel, Baller Hammett, P.C., 1225 Eye Street, NW., Suite 1200, Washington, DC 20005, (202) 682-3300.

i. *FERC Contact:* Michael Dees, (202) 219-2807.

j. *Comment Date:* June 29, 1992.

k. *Description of Project:* On April 23, 1991, the transferee filed an application to transfer the license for the Aurelius Avenue Dam Project No. 6786. In response to the Commission's June 4, 1991, order directing the transferee to submit additional information, the transferee submitted evidence on May 4, 1992, that the licensee had agreed to cooperate and join in the transfer proceedings. The Commission issued an order on May 21, 1992, finding that sufficient evidence had been submitted of the licensees' consent to justify processing the transfer application.

The proposed transfer will not result in any change in the project. The transferee states that it would comply with all terms and conditions of the license. The purpose of the transfer is to allow the transferee to enforce its rights as a secured creditor for loans which are now in default.

l. *This notice also consists of the following standard paragraphs:* B, and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027-UPC, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the application specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13931 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-518-000, et al.]

Columbia Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP92-518-000]

June 5, 1992.

Take notice that on May 26, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP92-518-000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for permission and approval to abandon two compressor units and related facilities located in Botetourt County, Virginia and for a certificate of public convenience and necessity authorizing the construction and operation of one compressor unit and related facilities located in Summers County, West Virginia in order to provide a firm transportation service for Westvaco Corporation (Westvaco), an enduser, under Columbia's blanket certificate authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to: (1) Install one 890-horsepower compressor unit and related structures and facilities at Flat Top Compressor Station in Summers County, West Virginia (Flat Top); and (2) abandon two 800-horsepower compressor units (Nos. 4 and 5) at Gala Compressor Station in Botetourt County, Virginia (Gala). Columbia states that Columbia would also install appurtenant gas cooler and uprate station piping at Flat Top and regulation on Lines KA-5 Loop and KB on its KA System in Summers County, West Virginia under § 2.55 of the Commission's Regulations to increase its existing operating pressure from 395 psig to 50 psig and improve operations. Columbia states that its current maximum allowable operating pressure on the KA System between Flat Top and Gala is 720 psig. The additional compressor at Flat Top would provide the capacity needed for the firm transportation service of 4,186 dt per day to Westvaco in Covington, Virginia, it is stated. Columbia states that the compressor units at Gala have become physically deteriorated and obsolete to the extent that replacement with additional horsepower at Flat Top is deemed advisable. Columbia indicates that the increased horsepower at Flat Top and the increase in the operating pressure on the KA System between Flat Top and Gala is the most economical means for replacing two deteriorating units at Gala while maintaining historic levels of throughput. The estimated cost of the proposed facilities is $3,109,000. The cost would be financed with funds generated from internal sources and a contribution in aid of construction of $800,000 from Westvaco.

Comment date: June 26, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Co.; Natural Gas Pipeline Company of America

[Docket Nos. CP79-205-010, CP79-204-010]

June 5, 1992.

Take notice that on May 26, 1992, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, hereinafter referred to as Applicants, filed in Docket Nos. CP79-205-010 and CP79-204-010, respectively, a joint petition to amend the order issued November 21, 1979 [1] in Docket Nos. CP79-205 and CP79-204 pursuant to Section 7(c) of the Natural Gas Act so as to amend the transportation service performed pursuant to a gas transportation and exchange agreement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Applicants states that they are amending Rate Schedules X-111 and X-36, respectively, so as to, add new transportation rates, reduce contract quantities, and update the supplies under the December 29, 1978 Agreement, as amended.

Comment date: June 26, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP92-525-000]

June 5, 1992.

Take notice that on June 3, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-525-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of certain farm tap and grain drying/irrigation installations and the associated transportation service, all a more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it seeks to abandon and transfer ownership to Peoples Natural Gas Company (Peoples) Panhandle's farm tap and grain drying/irrigation facilities located in Kansas, Oklahoma and Texas. It is stated that all facilities abandoned by Panhandle would remain in place for the continued use by Peoples. It is also stated that Peoples has agreed to assume Panhandle's obligation to serve these farm and grain driving/irrigation tap installations and any additional customers who may elect to exercise a previously unexercised tap right pursuant to the right-of-way agreement, and to continue to provide comparable service to the customers. Panhandle further states that it would provide transportation service to Peoples for the farm and grain/drying installations under Panhandle's open access blanket transportation rate schedules.

[1] 9 FERC (CCH) ¶ 61,223 (1979).

Comment date: June 26, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corp.

[Docket No. CP92-524-000]

June 5, 1992.

Take notice that on June 2, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Ave., SE., Charleston, West Virginia 25314, filed in Docket No. CP92-524-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to Penn Fuel Gas, Inc. (Penn Fuel), an existing wholesale customer, under Columbia's blanket certificate issued in Docket No. CP83-76-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the delivery point, consisting of a tap and interconnecting facilities, for residential, commercial and industrial end uses in Chester County, Pennsylvania. It is stated that Penn Fuel has requested the facilities in order to accommodate new industrial service for its customer, Emerald Industries, and to upgrade service for the town of Oxford, Pennsylvania. It is asserted that sales would be made under Columbia's currently effective service agreement with Penn Fuel under Columbia's Rate Schedule CDS. Columbia states that it would utilize the facilities to deliver up to 1,000 dt equivalent of gas on a peak day and 281,600 dt equivalent on an annual basis. It is explained that these volumes are within Penn Fuel's current entitlement from Columbia. The construction cost of the proposed facilities is estimated at $81,420, for which Columbia would be reimbursed by Penn Fuel.

Comment date: July 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Direct Energy Marketing Inc.

[Docket No. CI92-56-000]

June 8, 1992.

Take notice that on June 2, 1992, Direct Energy Marketing Inc. (DEMI) of 1580, 727-7th Avenue SW., Calgary, Alberta, Canada T2P 0Z5, filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of any natural gas, including all NGPA categories of previously certificated and/or contractually uncommitted NGA gas for which the producer or other supplier has the necessary sales and abandonment authorization, imported natural gas or LNG and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply. DEMI's application is on file with the Commission and open to public inspection.

Comment date: June 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-14003 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-596-000]

Pacific Gas and Electric Co.; Errata to Notice of Filing

June 9, 1992.

The Notice of Filing issued on June 4, 1992 in the above-referenced docket was incorrect. The correct notice should read as follows:

Take notice that on June 1, 1992, Pacific Gas and Electric Company tendered for filing a Transmission Rate Schedule For COTP Transmission Service provided to Transmission Agency of Northern California (TANC) by Pacific Gas and Electric Company (PG&E). This rate schedule sets forth the rates, terms and conditions under which PG&E offers to TANC firm transmission service associated with the completion of the California-Oregon Transmission Project.

Copies of this filing have been mailed to TANC and the following of its members: The California cities of Alameda, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa

Clara and Ukiah, the Modesto Irrigation District, the Plumas-Sierra Rural Electric Cooperative, the Sacramento Municipal Utility District and the Turlock Irrigation District; and to the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13946 Filed 6-12-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-006]

Energy Conservation Program for Consumer Products; Petitions for Waiver and Applications for Interim Waiver of Central Air Conditioner Test Procedures From Enviro Master International

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Enviro Master International (EMI) from the existing Department of Enrgy (DOE) central air conditioning test procedures relating to testing of EMI's ductless split system single-zone central air conditioner heat pumps series CHB and multizone central air conditioner heat pumps series MC/MH.

Today's notice also publishes two "Petitions for Waiver" from EMI requesting waivers from the existing Department of Energy (DOE) test procedure for central air conditioners. The first petition requests DOE to grant relief relating to testing of EMI's ductless split system central air conditioner heat pumps series CHB and MC/MH in the heating mode. EMI requests that a heating mode rating not be required because the models specified do not have defrost control. Therefore, these heat pumps are not capable of being tested in the heating mode in accordance with the test procedures. The second petition requests permission to use a modified test in order to test the EMI series MC/MH multizone systems in the cooling mode. This request is made because the test procedure has provisions for testing systems with one or two compressors, but not three or four compressors as manufactured by EMI in its series MC/MH systems. DOE is soliciting comments, data and information respecting the petition.

DATES: DOE will accept comment, data and information not later than July 15, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. CAC-006, Mail Station CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock Jr., U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-5778.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA). Public Law 95-619, 92 Stat. 3266, The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendment of 1988 NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners and heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures, 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

EMI's air conditioning and heat pump systems are used mostly in commercial applications, however, some of the designs can and have been used in multifamily residential facilities. Therefore it has been determined by DOE that the requirements of EPCA, as amended, apply to those EMI units powered by single phase current and rated below 65,000 Btu per hour. On December 3, 1991, EMI petitioned DOE for a waiver from the DOE test provisions that require a low temperature test at 17° F and a frost accumulative test at 35° F and the requirement to determine a Heating Seasonal Performance Factor (HSPF) for its CHB and MC/MH series systems. In a second letter dated December 4, 1991, EMI requested permission to use a modification of the DOE test in order to test its MC/MH series three and four

zone systems. On January 18, 1992, EMI submitted an Application for an Interim Waiver of the HSPF requirement. In a separate letter dated March 18, 1992, EMI requested Interim and Permanent Waivers to portions of the cooling mode test for multizone systems found in the central air conditioner test procedure. Additional information relating to these petitions, as requested by DOE, was provided by EMI in letters dated January 27, and February 25, 1992.

EMI proposes rating its heat pump model series CHB and MC/MH at the 47° F high temperature heating rating point and omitting the low temperature test at 17° F and frost accumulation test at 35° F. EMI states that these heat pump product lines, having a heating cycle low limit of approximately 35° F, offer consumers heat pump efficiency without the complication and cost of reversing cycle defrost components. These units find widespread use in regions where much of the prevailing heating season bin temperature is 35° F and above and there is little need for reverse cycle defrost. Since current DOE test procedures do not address this control feature, EMI asks that a waiver from rating its heat pump model series CHB and MC/MH in the heating mode be granted.

The Department finds that the design of the EMI model series CHB and MC/MH cannot be rated using the DOE test procedures. This is caused by a design feature which disengages the heat pump when the outdoor temperature falls below 35° F. The absence of a defrost control system in the EMI models and the company's inability to operate the basic models for the low temperature test at 17° F and the frost accumulation test at 35° F makes rating these units in the heating mode using the current test procedures impossible. Therefore, interim testing of these systems in order to determine the minimum Heating Seasonal Performance Factor in not required.

In regards to testing of the MC/MH multizone systems, EMI seeks to test its three and four zone systems in the manner prescribed in the DOE test for two zone systems. Current DOE test procedures only provide for testing of systems with one and two zones. For this reason, interim testing shall be done in the manner as requested by EMI.

In the letter dated December 3, 1991, EMI stated that heat pump model series CHB and MC/MH account for most of the company's heat pump sales. In a follow-up letter requesting an Interim Waiver, dated January 18, 1992, EMI stated that these product lines accounted for approximately 35% of its 1991 gross revenue and that loss of these product lines could result in loss of distribution channels which sell its cooling only product lines. The DOE showing of economic hardship for granting an Interim Waiver requires that the manufacturer demonstrate an adverse impact on the company caused by the inability to sell its product during the time required to process the Petition for Waiver. DOE believes that the information provided by EMI satisfies the requirement of economic hardship.

EMI's Applications for Interim Waivers requesting relief from the DOE test procedures for its central air conditioning ductless split system heat pumps, model series CHB and MC/MH, is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petitions for Waiver" in their entirety. The petition contains no confidential information. DOE solicits comments, data and information respecting these petitions.

In addition, pursuant to paragraph (e) of 10 CFR 430.27, the following letter granting the Applications for Interim Waiver was issued to Enviro Master International.

Issued in Washington, DC, June 9, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-14016 Filed 6-12-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Developement

[FRL-4144-2]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on May 18, 1992, the Environmental Protection Agency received an application from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121-2219, to determine if their Model 400 UV Photometric Ozone Analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92-14007 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4141-6]

Approval of PSD Permits; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. Enterprise Products Company—Permit PSD-TX-789, which was issued on August 9, 1991, authorizes the installation of a gas turbine cogeneration facility at the existing chemical manufacturing plant located on FM Road 1942, approximately one mile west of Mont Belvieu, Chambers County, Texas.

2. Texaco Chemical Company—Permit PSD-TX-780, which was issued on August 21, 1991, authorizes the construction of two gas turbine cogeneration units at the existing petrochemical complex located on State Highway 366, approximately one-half mile north of Port Neches, Jefferson County, Texas.

3. Natural Gas Pipeline Company—Permit PSD-TX-783, which was issued on August 21, 1991, authorizes the construction of a compressor station off FM Road 1184, approximately four miles southeast of Roxton, Lamar County, Texas.

4. Texaco Chemical Company—Permit PSD-TX-794, which was issued on August 29, 1991, authorizes the construction of a new cracking furnace at the existing petrochemical plant located at Gate 24 Savannah Avenue, Port Arthur, Jefferson County, Texas.

5. Houston Lighting and Power Company—Permit PSD-TX-371M-2 modifies PSD-TX-371M-1 to authorize an increase in the opacity limit to 15%, a three-hour maximum allowable emission rate for SO_2 of 9,000 lbs/hr with no change in the tons/year, and the company is no longer required to determine the concentration of lead in the lignite ash from representative samples from each 5-year mining plan at the electric generating station located off FM Road 39, approximately five miles southeast of Farrar, Limestone County, Texas. This modified permit was issued on August 29, 1991.

6. Simpson Pasadena Paper Company—Permit PSD-TX-769M-1

modifies PSD-TX-769 to authorize the company to conduct continuous emission monitor (CEM) performance evaluation tests at the same time the initial compliance test is conducted and submit the CEM performance evaluation report at the same time the compliance test report is submitted for the paper mill located on N. Shaver Street, Pasadena, Harris County, Texas. This modified permit was issued on September 26, 1991.

7. Enterprise Products Company—Permit PSD-TX-790, which was issued on October 1, 1991, authorizes the construction of a deisobutanizer/heat pump unit at the existing chemical manufacturing complex located on FM Road 1942, approximately one mile west of Mont Belvieu, Chambers County, Texas.

8. El Paso Natural Gas Company—Permit PSD-NM-1000, which was issued on October 1, 1991, authorizes the addition of a new 9,716 Hp turbine, a 7.5 lb boiler and a 400 Hp standby generator, and the upgrade of an existing 6,350 Hp turbine to 6,668 Hp at the existing White Rock compressor station located on the Navajo Indian Reservation off Highway 666, approximately 55 miles northeast of Gallup, San Juan County, New Mexico.

9. Vetrotex CertainTeed Corporation—Permit PSD-TX-784, which was issued on October 2, 1991, authorizes the construction of a new fiberglass manufacturing line at the existing fiberglass plant located at 4515 Allendale Road, Wichita Falls, Wichita County, Texas.

10. Shintech, Incorporated—Permit PSD-TX-285M-3 modifies PSD-TX-285M-2 to authorize the replacement of two existing polyvinyl chloride (PVC) dryers with a new PVC dryer and the addition of 4 PVC storage silos at the bagging facility at the existing PVC facility located at 5618 Highway 332 East, Freeport, Brazoria County, Texas. This modified permit was issued on October 28, 1991.

11. Maxus Exploration Company—Permit PSD-TX-797, which was issued on November 22, 1991, authorizes the construction of a cryogenic gas processing plant at the existing compressor station located off FM Road 119, approximately 3.25 miles southeast of Sunray, Moore County, Texas.

12. Koch Refining Company—Permit PSD-TX-763, which was issued on December 18, 1991, authorizes the construction of a new crude unit (No. 4) at the existing refinery located on Suntide Road, Corpus Christi, Nueces County, Texas.

13. Temple-Inland Forest Products Corporation—Permit PSD-TX-785M-1 modifies PSD-TX-785 to authorize the shutdown of the existing Kamyr continuous digester instead of the two 8,000 cubic foot batch digesters at the existing bleached Kraft pulp mill located on Highway 105 South, Evadale, Jasper County, Texas. This modified permit was issued on December 31, 1991.

These permits have been issued under EPA's Prevention of significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at CFR 124.19 for petitioning the administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been field with the Administrator.

Under section 307(b)(1) of the clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals, for sources in Texas, and the Tenth Circuit Court of Appeals, for sources located in New Mexico, within 60 days of June 15, 1992. Under section 307(b)(2) of the Clean Air Act, the requirements, which are the subject of today's notice, may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: May 15, 1992

Joe D. Winkle,

Acting Regional Administrator, Region 6.

[FR Doc. 92-14010 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4143-7]

Prevention of Significant Deterioration of Air Quality (PSD) Multitrade Limited Partnership, Inc., Pittsylvania County, VA

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this Notice is to announce that the Environmental Appeals Board of the United States Environmental Protection Agency issued a final decision, pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 and the Procedures for Decisionmaking codified at 40 CFR part 124, regarding Multitrade Limited Partnership, Inc. in Pittsylvania County, Virginia.

DATES: The effective date of the Environmental Appeals Board's decision was April 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Denis M. Lohman, Chief, New Source Review Section, Air Enforcement Branch, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, Mail Code 3AT22, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597-3024.

SUPPLEMENTARY INFORMATION: In separate petitions for review, two citizens, Margaret P. West and Dale Phillips, challenged the decision of the Virginia Department of Air Pollution Control (VDAPC) to issue an amended PSD permit to Multitrade Limited Partnership for construction and operation of a small wood-fired power generation plant.

Ms. West's petition for review was denied because it failed to identify any factual or legal errors or any policy consideration or exercises of discretion that warranted review. Mr. Phillips petition was denied because it was not filed in a timely fashion as well as it also failed to identify any factual or legal errors or any policy considerations or exercises of discretion for review.

Anyone wishing to review the final permit, petition, final order, or related materials should contact the following offices:

U.S. Environmental Protection Agency, Region III, Air Enforcement Branch, New Source Review Section (3AT22), 841 Chestnut Building, Philadelphia, Pennsylvania 19107

Virginia Department of Air Pollution Control, Room 801, Ninth Street Office Building, Richmond, Virginia 23219

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, notice is today being published in the Federal Register of this final Agency action. If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under Section 307(b)(1) of the Clean Air Act (Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on

which this determination is published in the **Federal Register**. Under section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: June 5, 1992.

Thomas C. Voltaggio,

Acting Regional Administrator.

[FR Doc. 92-14009 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4143-9]

Science Advisory Board Environmental Engineering Committee Open Meeting

July 7-9, 1992.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet on Tuesday, July 7 through Thursday, July 9, 1992. The meeting will be at the Howard Johnson National Airport Hotel, Dominion Rooms 1 and 2, 2650 Jefferson Davis Highway, Arlington, VA 22202. The hotel telephone number is (703) 684-7200. The meeting will begin at 9 am on Tuesday, July 7th and 8:30 am on both Wednesday and Thursday, July 8th and 9th, and will adjourn no later than 3 pm on July 9th.

At this meeting, the EEC will (1) conduct edits and revise a working draft report on the Agency's Office of Research and Development (ORD) Bioremediation Research Program Strategy, which was presented to the SAB's Bioremediation Research Review Subcommittee on February 10 and 11, 1992; (2) review a draft document entitled "Hydrogen Fluoride Study: Report to Congress" which was required to be developed pursuant to section 301(n)(6), Clean Air Act Amendments of 1990 and was prepared by the Agency's Chemical Emergency Preparedness and Prevention Office (CEPPO). For information on the draft document entitled "Hydrogen Fluoride Study: Report to Congress", call Dr. R. Craig Matthiessen on the CEPPO Staff at (202) 260-9781; (3) receive briefings from Agency staff and discuss possible reviews in FY 1993, including (a) the Office of Solid Waste's (OSW's) Oily Waste issues, (b) ORD's proposed Anticipatory Research Plan and proposed pilot, (c) ORD's numerous issue plans that are engineering-oriented, and other possible FY 1993 activities; (4) discuss possible follow-up activities to the EEC's report on Leachability Phenomena (EPA-SAB-EEC-92-003), dated October 1991, and (5) On July 9, 1992 conduct a consultation on the topics of Superfund's Ground Water Strategic Plan as well as the Superfund Dense Non-Aqueous Phase Liquids (DNAPL's) issues.

The proposed charge on review of the hydrogen fluoride (HF) study to the SAB's EEC from the Agency's CEPPO is to focus on the techniques used to address hazards and risks, worst-case accident assumptions and source terms, atmospheric modeling of consequences and assessment of mitigation or prevention practices. The specific questions asked by the CEPPO staff are as follows: (1) Does the technical information related to chemical and process hazards of HF appear to be complete? (2) Is the industry manufacturing, processing and use information properly characterized? (3) Do the industry practices sections appear to be complete and adequately characterized?, and (4) Does the technical information on accident history and accident scenarios appear to be adequately characterized and complete?

The proposed charge on the Superfund DNAPL consultation is to review the overall approach and strategy for addressing DNAPL ground water contamination that will outlined for the future draft guidance documents. The SAB/EEC is being asked to provide informal technical advice in this consultation to ensure that the draft guidance documents are technically sound and that they incorporate the state-of-the-art methods and instrumentation and address the significant information gaps and guidance needs for ground water research.

The meeting is open to the public and seating will be on a first come basis. Any member of the public wishing further information, such as a proposed agenda on the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260-6552. Written comments received by June 25, 1992 will be mailed to the SAB/EEC; comments received after that date will be provided to the EEC at the meeting. Written comments of any length (at least 35 copies) may be provided to the EEC up until the meeting.

Members of the public who wish to make a brief oral presentation should contact Dr. K. Jack Kooyoomjian no later than July 2, 1992. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time to five minutes.

Dated: June 8, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 92-14008 Filed 6-12-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 246]

Developing/Implementing Postdoctoral Specialty Training Programs in Occupational Health Psychology; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds for a cooperative agreement to develop a postdoctoral training program in occupational health psychology. The overall purpose of this program is to establish necessary expertise to advance the knowledge of psycho-social/job stress factors in the workplace, their effects on the mental and physical health, performance, and well-being of workers, and ways for preventing such problems. The agreement expands the current occupational health and safety training efforts of CDC and the National Institute for Occupational Safety and Health (NIOSH) to include professional capacity building to address a growing occupational problem-psychological stress.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (for ordering Healthy People 2000, see section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

The agreement also supports implementation of the NIOSH Proposed Strategy for the Prevention of Work Related Psychological Disorders which calls for increased professional training and mental health services to deal with workplace stress/health problems and means for their alleviation.

Authority.—This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)).

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations, associations or groups representing relevant behavioral/social science professions, or universities, colleges, and training institutions offering professional (postdoctoral) development programs in cogent areas and in a position to affect the leadership, coordination, and other actions needed to implement the requirements of the cooperative agreement.

Availability of Funds

Approximately $50,000 will be available in Fiscal Year 1992 to fund one cooperative agreement. The award is expected to begin on or about September 30, 1992, for a 12-month budget period within a project period of up to four years. Funds for the first year will cover start-up, and organizing activities to facilitate the development of the proposed training project. It is anticipated that awarded funding levels available in the second through fourth years will be $300,000 to $500,000 per year to cover operational costs of selected/approved training sites, stipends for postdoctoral students selected for such training, and administrative matters related to the program.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this award is to develop a plan for a model postdoctoral training program in occupational health psychology based in university sites which would address issues of workplace psycho-social stress, its effects on worker mental and physical health, performance and well-being, and means for preventing its occurrence or otherwise alleviating its adverse effects. Subsequent effort would provide for the implementation of the plan with the support for a first cohort of psychologists to undertake such training in solidifying the program and building a base for advancing research, applications, and interventions consistent with the NIOSH strategy for preventing work-related psychological disorders.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop a complete plan to establish a model postdoctoral training program in occupational health psychology acknowledging the needs for integrating knowledge in the behavioral and social sciences with that found in occupational medicine, public health, industrial hygiene, and management/organization theory so as to suitably address workplace stress/health problems and the psycho-social issues that may be involved.
2. Effect contacts with established professional groups in the behavioral and social sciences along with those representing occupational medicine, public health, industrial hygiene, and organization/management to obtain necessary support/inputs into curricula/program development.
3. Provide incentives/mechanisms for soliciting university-based sites for the postdoctoral training.
4. In cooperation with CDC, develop criteria for selection of the training sites.
5. Provide incentives/mechanisms for recruiting postdoctoral trainees.
6. In cooperation with CDC, establish criteria for the selection and placement which matches attributes of postdoctoral trainees and training sites to ensure maximal success in specialty development.
7. Develop and implement a plan for program evaluation and ways for establishing the program as a recognized specialty area in occupational health accenting psycho-social science.
8. Provide for trainee orientation and opportunities for their interaction with leading researchers/practitioners active in areas of psycho-social factors affecting worker health/productivity and well-being.
9. Collaborate with CDC in publicizing the program, the sites available which offer such training, significant trainee activities and projects.

B. CDC Activities

1. Provide technical assistance and consultation, through site visits and correspondence, in the areas of program development and implementation.
2. Supply training materials in the form of NIOSH technical reports, research publications, project summaries and other programmatic data on timely subjects/issues for training exercises, student projects.
3. Serve as invited lecturers and offer seminars in the course of visits to training sites.
4. Co-arrange with the recipient orientation sessions for new postdoctoral trainees.
5. Effect contacts between the recipient and traditional NIOSH-supported professional training institutions in appreciating role of the new specialty area, and expansion possibilities for meeting added training needs.
6. In cooperation with recipient, establish criteria and procedures for selecting university-based training sites and postdoctoral trainees best able to satisfy the program goals.

Evaluation Criteria

Applications will be reviewed and evaluated to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including (a) the applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)
2. Strength, unique qualities of the proposal in terms of satisfying the objectives, particular elements in the development of the training program, its manner of implementation and evaluation. (25%)
3. Feasibility of meeting the proposed goals of the cooperative agreement including (a) proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement, (b) the proposed method for determining such accomplishments. (20%)
4. Training and experience of the Program Director and key staff members with regards to expertise in the subject matter of the proposed cooperative agreement and other special capabilities for effecting the planned work. (15%)
5. Viability of mechanisms for ensuring participation of affiliate parties, enabling access to university-based training sites and recruitment of postdoctoral trainees best qualified to advance the specialty area of study, and means for enhancing its durability once established. (20%)
6. The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.263.

Application Submission and Deadline

The original and two copies of the PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, on or before August 15, 1992.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or,

b. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 246. You will receive a complete program description, information on application procedures, and application forms.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from Alexander Cohen, Ph.D., Division of Biomedical and Behavioral Service, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, Mailstop C-22, Cincinnati, Ohio 45226, (513) 533-8462.

Please refer to Announcement Number 246 when requesting information on this program.

Potential applicants may obtain a copy of Healthy People 2000; (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Copies of the NIOSH Proposed Strategy for the Prevention of Work Related Psychological Disorders DHHS (NIOSH) Publication No. 89-137, are available from NIOSH Publications, 4676 Columbia Parkway, Ohio 45226, or by calling (513) 533-8287.

Dated: June 9, 1992.

J. Donald Miller,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 92-13982 Filed 6-12-92; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 92N-0202]

Chemdex, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Chemdex, Inc. The NADA provides for the use of Iron Hy-Dex (iron dextran complex injection) for the prevention and treatment of anemia due to iron deficiency in baby pigs. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: Chemdex, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is the sponsor of NADA 12-685 which provides for the use of Iron Hy-Dex (iron dextran complex injection) for the prevention and treatment of anemia due to iron deficiency in baby pigs. By letter dated February 12, 1992, the sponsor requested the withdrawal of approval of the NADA because the product is no longer being marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 12-685 and all supplements and amendments thereto is hereby withdrawn, effective June 25, 1992.

Dated: June 8, 1992.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 92-13966 Filed 6-12-92; 8:45 a.m.]

BILLING CODE 4160-01-F

[Docket No. 92N-0239]

Drug Export; Peritosteril (Delflex Peritoneal Dialysis Solution in Low Calcium Formulation)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fresenius USA, Inc., has filed an application requesting approval for the export of the human drug Peritosteril (delflex peritoneal dialysis solution in low calcium formulation) to New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fresenius USA, Inc., 4090 Pike Lane, Concord, CA 94520, has filed an

application requesting approval for the export of the human drug Peritosteril (delflex peritoneal dialysis solution in low calcium formulation) to New Zealand. This drug is indicated for use in peritoneal dialysis. The application was received and filed in the Center for Drug Evaluation and Research on May 11, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 25, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 4, 1992.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-13924 Filed 6-12-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0238]

Drug Export; Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fresenius USA, Inc., has filed an application requesting approval for the export of the human drug Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags) to New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fresenius USA, Inc., 4090 Pike Lane, Concord, CA 94520, has filed an application requesting approval for the export of the human drug Peritosteril (Delflex Peritoneal Dialysis Solution in 2.5 Liter Bags) to New Zealand. This drug is indicated for use in peritoneal dialysis. The application was received and filed in the Center for Drug Evaluation and Research on May 11, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 25, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 4, 1992.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-13925 Filed 6-12-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-92-4111-16]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement on the MetFuel Hanna Basin Coalbed Methane Project in central Carbon County, Wyoming.

SUMMARY: This draft environmental impact statement (EIS) assesses the environmental consequences of a methane gas development project in the Hanna Basin of northeast central Carbon County, approximately 7 miles north of Hanna, Wyoming. The proposed project entails the drilling, testing, operation, abandonment, and reclamation of a coalbed methane gas production operation in the Hanna Basin by Metfuels, Inc.

DATES: The public comment period will begin on or about June 22, 1992 and will end on or about August 22, 1992. A public meeting has been scheduled for July 15, 1992, beginning at 7 p.m. at the Hanna Town Government Office, 301 S. Adams Street, Hanna, Wyoming. To ensure that comments will be considered in the final EIS, they should be received no later than close of business, August 22, 1992 at the address listed below.

ADDRESSES: Comments or concerns should be addressed to Area Manager, Great Divide Resource Area, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 8230l.

FOR FURTHER INFORMATION CONTACT: Bob Tigner, Rawlins District Office, phone (307) 324-7171, or contact the address listed above.

SUPPLEMENTAL INFORMATION: The proposed project addressed in this draft EIS involves the drilling and development of a maximum of 130

coalbed methane wells on a 160 acre spacing within the project area. The proposed project would disturb approximately 1018 acres on or adjacent to the 28,044 acre project area from the construction of pipelines, well pads, roads, powerlines and compressor stations. It is anticipated that full field development would require several years, with approximately 50 wells being drilled in 1992 and the remainder drilled in 1993.

Dated: June 9, 1992.

F. William Eikenberry,

Associate State Director.

[FR Doc. 92-13981 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-22-M

[CO-930-5440-005; COC-53865]

Proposed Issuance of Disclaimer of Interest, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed issuance of recordable disclaimer of interest for patented mining claims in Pitkin County, Colorado.

SUMMARY: Notice is hereby given pursuant to section 315 of the Act of October 21, 1976 (43 U.S.C. 1745), that Marjorie B. Stein,

c/o Thomas C. Hill, Attorney at Law, 201 North Mill Street, Aspen, Colorado 81611, has filed application Colorado 53865 for a recordable disclaimer of interest for the Alpine, Ide, Boaze, Brooklet, and Brookside patented lode mining claims, Mineral Survey No. 6783, in sections 22 and 27, T. 9 S., R. 84 W., Sixth Principal Meridian, Colorado.

The Bureau of Land Management has reviewed the official records and has determined that the United States has no claim to or interest in the above-described patented mining claims and that issuing a recordable disclaimer of interest will help to remove a cloud on the title to the claims. Accordingly, the recordable disclaimer of interest will be issued no sooner than ninety days after the date of this publication. Information concerning the proposed disclaimer may be obtained from the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Dated: June 3, 1992

Robert S. Schmidt,

Chief, Branch of Realty Programs, Colorado State Office.

[FR Doc. 92-13934 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-JB-M

[ID-050-5700-11; IDI-28818]

Direct Sale of Public Land in Lincoln County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land has been examined and through the public supported land use planning process has been determined to be suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the fair market value of $3,280. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 6 S., R. 21 E., Boise Meridian,
Sec. 30: Lot 4.

The area described contains 16.4 acres.

DATES: For a period of 45 days after publication, interested parties may submit comments to the District Manager.

Objections will be reviewed by the State Director who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Upon publication, the land will be segregated from appropriation under the public land laws, including the mining laws, except from mineral leasing and the sale provisions of the Federal Land Policy and Management Act. The segregation will end upon issuance of patent, or 270 days from the date of publication, whichever occurs first.

ADDRESS: Shoshone District Bureau of Land Management, 400 West F Street, P.O. Box 2-B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Mical E. Walker, Monument Resource Area Realty Specialist, at telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to L.R. Gillette. It has been determined that this parcel contains no known mineral values; therefore, mineral interests, with the exception of oil and gas, will be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation to the United States for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945) and a reservation to the United States for oil and gas by the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

Dated: June 5, 1992.

Mary C. Gaylord,

District Manager.

[FR Doc. 92-13969 Filed 6-12-92; 8:45 am]

BILLING CODE 4310-GG-M

[ID-913-02-4740-04]

Recreation Management Restrictions, etc.: Idaho; Camping Stay limits

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping and occupancy stay limits for campgrounds and undeveloped public lands in Idaho.

SUMMARY: Persons may camp within designated campgrounds or on undeveloped public lands not closed to camping on the public lands within the State of Idaho for a period of not more than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas with specifically designated camping stay limits. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28 day period. After the 14th day of occupation campers must move outside of a 25-mile radius of the previous location. The 28-day period will begin when a camper initially occupies a specific location on public land. When a camping limit has been reached, use of a site shall not occur again until at least 14 days have elapsed from the last day of authorized use. Under special circumstances, and upon request, the authorized officer may give written permission for extension of the 14-day limit.

Additionally, no person except those holding valid mining, tunnel, or millsite claims, with a current notice on file with the BLM office responsible for management of the lands where the supplies are located, may leave personal property or supplies unattended on public lands for a period of more than 24 hours in designated campgrounds or recreation areas or 5 days on other public lands without written permission of the authorized officer.

DEFINITIONS: As used in these supplementary rules, the term:

(a) *Camping* is defined as the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of

overnight occupancy. Occupying a developed campsite or specific location within campgrounds other than for administrative activities during the established night period of 10 p.m. to 6 a.m. will be considered overnight camping for fee collection and enforcement purposes.

(b) *Occupation* means the taking or holding possession of a camp or residence on public land.

(c) *Public lands* mean any lands or interest in lands owned by the United States and administered by the Bureau of Land Management.

(d) *Authorized Officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform under Title 43.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau of Land Management in reducing the incidence of long-term occupancy trespass being conducted under the disguise of camping on public lands within the State of Idaho. Of equal importance is the problem of user conflicts resulting from long-term camping, which precludes equal opportunities for other members of the public to camp in the same area.

Authority for this stay limit is contained in CFR title 43, chapter II, part 8360, subparts 8365.1–2, 8365.1–6, and 8365.2–3.

Dated: May 29, 1992.

Pieter J. Van Zanden,

Associate State Director.

[FR Doc. 92–13921 Filed 6–12–92; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of January, February, and March 1992

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Part No.	Issued date
January		
San Antonio Zoological Gardens & Aquarium	763484	1/31/92
Leland, David Jung	762752	1/29/92
San Antonio Zoological Soc.	764266	1/27/92
San Antonio Zoological Gardens & Aquarium	762581	1/21/92
Depner, Greg L	761961	1/17/92
Chicago Zoological Park	762127	1/17/92
San Diego Zoological Society	763770	1/15/92
The University of Michigan Museum of Zoology	759741	1/15/92
San Diego Zoological Society	763489	1/07/92
San Diego Zoological Society	763487	1/07/92
Institute For Herp. Research	761678	1/06/92
February		
Morris, Jay	763260	2/17/92
H. Co. Simon Lakeline Mall Partnership	762988	2/13/92
Gruenerwald, William	762605	2/13/92
R. Bruce Thatcher	760317	2/13/92
Hunt, Carl	761569	2/12/92
San Diego Zoological Society	764463	2/10/92
Manimal Magic Act	765658	2/10/92
Metro Washington Park Zoo	761872	2/09/92
Arnold R. Marshall	761891	2/09/92
Jacksonville Zoological Park	763744	2/07/92
Miami Metro Zoo	763740	2/07/92
Florida Game & Fresh Water Fish Commission	763741	2/06/92
White Oak Plantation	763743	2/06/92
Lowry Park Zoological Garden	763742	2/06/92
Shortino, Leo M	764121	2/04/92
Penner, Toni	764200	2/03/92
March		
Mesa Garden	678845	3/26/92
Johnson, Gary M	717614	3/26/92
Stafford, Robert W	756126	3/24/92
McNatt, Henry III	765141	3/23/92
Minnesota Zool. Garden	763867	3/20/92
Burnet Park Zoo	765194	3/19/92
USFWS, Regional Dir., Reg. 6	704930	3/19/92
House, William R	764231	3/14/92
Brooks, James P	763430	3/14/92
Jan Giacinto & Dirk Arthur Exotic Animals	762968	3/13/92
L.A. Waters	765052	3/10/92
Bartels, Ronald J.	764966	3/06/92
Institute For Wildlife Studies	744878	3/05/92
Nat'l Marine Fisheries	759401	3/04/92
Binder Park Zool. Soc.	763759	3/04/92
LSA Associates, Inc.	746056	3/02/92
San Diego Zool. Soc.	764955	3/02/92

Additional information on these permit actions may be requested by contacting the Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, telephone (703/358–2104) during normal business hours (7:45 a.m.–4:15 p.m.) weekdays.

Dated: June 9, 1992.

Margaret Tieger,

Acting Chief, Branch of Permit, Office of Management Authority.

[FR Doc. 92–13935 Filed 6–12–92; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The name of the parent corporation and its principal address is: D.L. Lee & Sons, Inc., Post Office Box 206, 8th and Alma Streets, Alma, Georgia 31510.

2. The name of the subsidiary which will participate in the operations in the States of Georgia, Florida, South Carolina, and Alabama: F.D. of Georgia, Inc., State of Incorporation: Georgia.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–14005 Filed 6–12–92; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by July 15, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93/94 Visual Arts Fellowships Application Guidelines.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under the Visual Arts Program Fellowships category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process

Estimated Number of Respondents: 5250.

Average Burden Hours per Response: 1.5.

Total Estimated Burden: 7,875.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-13948 Filed 6-12-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission (new, revision, or extension):* Extension.
2. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.
6. *An estimate of the number of responses:* 60 per year.
7. *An estimate of the total number of hours needed to complete the requirement or request:* 176 hours annually (an average of .23 hours per response plus 5.6 hours per recordkeeper).
8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.
9. *Abstract:* Recipients of NRC financial assistance provide data on procedures to provide assurance to NRC that they are in compliance with nondiscrimination policies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document, Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0053), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 5th day of June 1992.

For this U.S. Nuclear Regulatory Commission.

George H. Messenger,

Acting Senior Official for Information Resources Management.

[FR Doc. 92-13996 Filed 6-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.24, criticality accident requirements relative to Facility Operating license No. DPR-73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, date February 11, 1980, a new set of formal license requirements was imposed by order to reflect the post-accident condition of the facility and to assure the continued maintenance of the safe, stable, long-term cooling condition of the facility (45 FR 11292). These license conditions and those imposed by subsequent orders were formally incorporated in the TMI-2 license on January 27, 1987. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The action being considered by the Commission is exemption from 10 CFR 70.24 requirement for a monitoring system capable of detecting a criticality accident in special nuclear materials (SNM) storage areas. The need for such a system at TMI-2 is obviated by the use of safe mass limits and safe geometries in the SNM storage areas.

The Need for the Proposed Action

The exemption is necessary to grant relief from criticality monitoring requirements that are burdensome and not needed for safety purposes.

Environmental Impacts of the Proposed Action

The proposed action will have no environmental impact as it only affects the installation or lack thereof of electronic instrumentation in SNM storage areas. Thus, this exemption will not change the types, or allow an increase in the amounts of effluents that may be released to the environment. Individual and cumulative occupational radiation exposure would actually decrease slightly as the need to use radioactive sources to periodically calibrate the criticality monitors would be obviated. The SNM storage areas will be criticality safe by mass limit and geometric limits. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within restricted areas as defined by 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental effects associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action; this would increase the environmental impact by increasing occupational radiation exposure to personnel calibrating the instruments using radiation sources.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Programmatic Environmental Impact Statement for TMI-2 dated March 1981 as supplemented.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the letter from GPUN, Request for Exemption from 10 CFR 70.24, dated May 21, 1987. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 92-13988 Filed 6-12-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 44th meeting on Thursday, June 25, 1992 at 1 p.m. until 5 p.m., at the Quality Inn on Clover Island, 435 Clover Island, Kennewick, WA. The entire meeting will be open to public attendance. Notice of this meeting was previously published in the **Federal Register** on Thursday, May 21, 1992 (57 FR 21678).

The agenda for the subject meeting shall be as follows:

A. Address the request from Chairman Selin made on April 24, 1992, for a supplemental report regarding a systems analysis approach for reviewing the overall HLW management and disposal program.

B. Hear a report from the ACNW Working Group Chairman on a recent meeting in which the NRC staff presented the results of its review of DOE's Early Site Suitability Evaluation. A report on this topic by the Committee is expected.

C. Hear a briefing regarding the status of remedial actions at the Hanford site.

D. Hear a briefing and hold discussions regarding in situ vitrification programs.

E. Discuss and consider a draft report concerning progress on the DOE's Site Characterization plan for the proposed high-level waste repository, complementary study plans, and DOE's efforts to resolve the issues raised in the NRC staff's Site Characterization Analysis.

F. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: June 9, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-13997 Filed 6-12-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on June 25, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, June 25, 1992—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue to discuss the revision to NUREG-1365, Severe Accident Research Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (e.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 8, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–13998 Filed 6–12–92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Information Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The objectives of the conference are to give the licensees and the public insights into our approach to safety regulations and to provide a forum for feedback from those in attendance on their concerns about our overall approach, as well as feedback on differences that may exist on technical issues. NRC staff will provide information on on-going programs and potential new initiatives as a basis for discussion.

Discussions will proceed from general (i.e., the plenary sessions) to specific (i.e., the breakout sessions), with emphasis on plant operations and the NRC view of these operations based on experience in carrying out its regulatory mission. Four plenary sessions are planned, three of which will be followed by breakout sessions that will include presentations by the NRC staff and industry representatives.

DATES: The conference will be held July 21–22, 1992.

ADDRESSES: The conference will be held at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036, telephone: (202) 347–3000.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Weiss, Brookhaven National Laboratory, Building 197C, Upton, New York 11973, telephone (516) 282–4473.

SUPPLEMENTARY INFORMATION:

Registration: There is a registration fee of $200 which must be received by July 2, 1992. Questions regarding registration should be directed to Allen Weiss, Brookhaven National Laboratory (address and telephone number stated above).

Participation: This conference is open to the general public; however, advance registration is required.

The following is the preliminary program for the conference:

Tuesday, July 21, 1992, 9 a.m.–5:15 p.m.

1. Introductory and Opening Remarks
2. Morning Plenary Session: Regulatory Trends
3. Breakout Sessions:
   a. Plant Life Extension
   b. Shutdown Risks
   c. Pilot Revised Procurement Inspection
   d. Enforcement and Office of Investigation Issues
4. Luncheon Speaker: Chairman Ivan Selin, 12:30 p.m.–2 p.m.
5. Afternoon Plenary Session: Status of Advanced Light Water Reactor (ALWR) Design Certification
6. Breakout Sessions:
   a. ALWR Technical Issues
   b. Individual Plant Examinations
   c. Engineering Issues
   d. Legal Issues
7. Dinner Speaker: Commissioner Forrest J. Remick, 6:30 p.m.–8:30 p.m.

Wednesday, July 22, 1992, 8:30 a.m.–5 p.m.

1. Speaker: Commissioner James R. Curtiss 8:30 a.m.–9:15 a.m.
2. Morning Plenary Session: Regional Issues
3. Breakout Sessions:
   a. Maintenance Rule Implementation
   b. Training/Requalification
   c. Standard Technical Specifications
   d. Steam Generator Issues
2. Luncheon Speaker: Commissioner Kenneth C. Rogers 12:15 p.m.–1:30 p.m.
3. Breakout Sessions:
   a. Reactor Vessel Integrity
   b. Digital Control Systems
   c. Service Water Issues
   d. Reporting Issues
4. Closing Plenary Session: Summary/Closing 3:30–4:30 p.m.

Note: There will be a question and answer period after each session each date.

Next year's conference is tentatively scheduled for May 4–5, 1993.

Subject: Notice of meeting at Mayflower Hotel; July 21–22, 1992

Dated in Rockville, Maryland this 8th day of June 1992.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Chief, Planning, Program, and Management Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13987 Filed 6–12–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027]

Sequoyah Fuels Corp., Gore, OK, Facility; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated July 1, 1991, and a Supplemental Petition dated November 15, 1991, submitted by Citizens' Action for a Safe Environment regarding Sequoyah Fuels Corporation's Gore, Oklahoma, facility.

By Memorandum and Order dated August 2, 1991, the Atomic Safety and Licensing Board, presiding over the proceeding on the license renewal for Sequoyah Fuels Corporation (SFC), referred the Petition to the staff for consideration under 10 CFR 2.206. The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) deny SFC's application to renew its operating license for the Sequoyah facility. The Supplemental Petition requests that the NRC revoke SFC's operating license.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny both the Petition and the Supplemental Petition. The reasons for this Decision are explained in a "Director's Decision Under 10 CFR 2.206" (DD–92–02), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street NW., Washington, DC 20555, and the Local Public Document Room, Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 8th day of June 1992.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–13999 Filed 6–12–92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Clinton Power Station, Unit No. 1; Withdrawal of Application for Amendment to Facility Operating License; Illinois Power Company, et al.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensees) to withdraw a December 21, 1988, application for an amendment to Facility Operating License No. NPF-62 for the Clinton Power Station, Unit No. 1, located in Harp Township, DeWitt County, Illinois.

The proposed amendment would have modified the facility Technical Specifications pertaining to section 3/4.3.2, "Containment and Reactor Vessel Isolation Control System" (CRVICS) Table 3.3.2-1, "CRVICS Instrumentation," to clarify the minimum operable channels required per trip system for the Residual Heat Removal (RHR) system isolation logic. This would have been effected, in part, by separating the RHR Isolation section of Table 3.32-1 into two parts to address the isolation logic associated with RHR Division I separately from the isolation logic associated with RHR Division II.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 7, 1990 (55 FR 4272). However, by letter dated April 24, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 21, 1988, and the licensee's letter of April 24, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 5th day of June 1992.

For the Nuclear Regulatory Commission.

C.E. Carpenter, Jr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-14000 Filed 6-12-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Form 113-G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request submitted to OMB for clearance to continue to collect information for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113-G). The data collected are used by OMB and OPM to: (1) Monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under assigned ceilings during the current fiscal year. One hundred thirty-one Federal agencies provide monthly reports to OPM. It takes two hours to complete one report, for an annual total information collection burden of 3,144 hours. For copies of the clearance package, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908-8550.

DATES: Comments on this information collection should be received within 30 days from date of this publication.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street NW., Washington, DC 20415

And

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606-2684.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-13958 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

Request for Clearance of Form SF 3105

AGENCY: Office of Personnel Management

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form SF 3105, Documentation in Support of Disability Retirement Application, is used by applicants for disability retirement under the Federal Employees Retirement System, to supply OPM with documentation of their medical condition. The information is used by OPM to determine if the applicant meets the requirements for disability retirement.

Approximately 2,100 SF 3105 forms will be completed per year. The form requires 90 minutes to fill out. The annual burden is 3150 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—

Mr. Edward Chmielowski, Acting Chief, FERS Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E. Street, NW, rm. 4429, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-13959 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

Federal Salary Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the tenth meeting of the Federal Salary Council will be at the time and place shown below. The agenda for this meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees

Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATE: June 30, 1992, beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., Room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

For the President's Pay Agent.

Constance Berry Newman,

Director.

[FR Doc. 92-13957 Filed 6-12-92; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A92-12; Order No. 927]

Summit, Kentucky 42783 (Tom Richardson, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 9, 1992.

Docket Number: A92-12.

Name of Affected Post Office: Summit, Kentucky 42783.

Name(s) of Petitioner(s): Tom Richardson.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: June 3, 1992.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)];

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before June 18, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

June 3, 1992—Filing of Petition

June 9, 1992—Notice and Order of Filing of Appeal

July 13, 1992—Last day for filing of petitions to intervene [see 39 3001.111(b)]

July 23, 1992—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)]

August 12, 1992—Postal Service Answering Brief [see 39 CFR 3001.115(c)]

August 27, 1992—Petitioner's Reply Brief should petitioner choose to file one [see 39 CFR 3001.115(d)]

September 8, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]

September 30, 1992—Expiration of 120-day decisional schedule [see 39 U.S.C. sec. 404(b)(5)].

[FR Doc. 92-13963 Filed 6-12-92; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18761; 812-7757]

Comstock Partners Strategy Fund, Inc., et al.; Application

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Comstock Partners Strategy Fund, Inc. (the "Fund"), Comstock Partners, Inc. (the "Investment Adviser"), and Dreyfus Service Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 18(f)(1), 18(g), and 18(i) of such Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Fund to issue a new class of shares representing interests in the same portfolio of securities as an existing class of shares, with the existing class thereafter only being issued to shareholders of the existing class upon reinvestment of distributions.

FILING DATES: The application was filed on July 19, 1991 and amendments were filed on December 24, 1991 and April 22, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Fund and the Investment Adviser, 45 Broadway, New York, New York 10006; the Distributor, 200 Park Avenue, 8th Floor West, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The fund originally commenced operations in May of 1988 as a non-diversified closed-end management investment company. At a special meeting of shareholders held on June 14, 1991, a majority of the Fund's outstanding shares voted to approve the conversion of the Fund to an open-end investment company. The conversion occurred on August 1, 1991.

2. Comstock Partners, Inc. is the investment adviser for the Fund, and the Dreyfus Corporation (the "Sub-Investment Adviser") is the sub-investment adviser for the Fund. Princeton Administrators, Inc. (the "Administrator") is the administrator for the Fund. After conversion of the Fund to an open-end investment company, Dreyfus Service Corporation became the distributor for the Fund, and Financial Data Services, Inc. (the "Transfer Agent") and The Bank of New York (the "Custodian") became the transfer agent and custodian, respectively, for the Fund.

3. As of the date of the conversion, Fund shares are sold with a maximum front-end sales load of 4.50% (subject to change if later deemed advisable) by the Distributor, certain financial institutions

(that may include banks), securities dealers, and other industry professionals (collectively, "Service Agents") who have entered into service agreements with the Distributor.

4. Applicants believe that the conversion may cause a substantial redemption of Fund shares over time resulting in a significant increase in the Fund's ratio of operating expenses to net assets. To offset these redemptions by facilitating the sale of Fund shares, the fund proposes to adopt an account maintenance plan pursuant to rule 12b–1 under the Act (the "Account Maintenance Plan"). Applicants, however, realize that shareholders who purchased fund shares in the Fund's initial public offering in 1988 paid an underwriting commission of up to 6.50% of the price of the shares. In addition, these shareholders, as well as those shareholders who purchased shares prior to the date of the proxy statement proposing the conversion, did not anticipate the payment of a rule 12b–1 fee. In light of the foregoing, the Fund believes, that in the interests of fairness, only purchasers of new shares should be required to bear the costs of a rule 12b–1 fee.[1]

5. Applicants propose the creation of two classes of shares, "Class A Shares" and "Class B Shares." Class A and Class B Shares would represent interests in the same investment portfolio, rather than in separate portfolios. Under this arrangement, each Class A Share and Class B Share would represent an equal *pro rata* interest in the Fund and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, subject to certain exceptions listed below in item 1 under Applicants' Conditions.

6. If the requested exemptive order is granted, all of the existing shares of the Fund (the "Existing Shares") would be converted into Class A shares upon the effectiveness of an amendment to the Fund's registration statement on Form N–1A relating to both the Class A and B Shares. Class A Shares would be identical in all respects and would be subject to the same investment objective, policies, and limitations that currently apply to the Existing Shares. Class A Shares, however, would no longer be sold, except dividends declared on Class A Shares and reinvested in the fund would be invested in Class A. Any new shares of the Fund sold would be Class B Shares.

7. The fund will offer Class B Shares subject to a front-end sales load. The Fund anticipates that the sales load will be the same as that charged to Existing Shares. In addition, Class B shareholders will be assessed an ongoing account maintenance fee (the "Account Maintenance Fee") under the Account Maintenance Plan at an expected annual rate of .25 of 1% of the value of the Fund's average daily net assets attributable to Class B Shares.

8. Under the Account Maintenance Plan, the Class B shareholders will pay to the Distributor the Account Maintenance Fee for advertising, marketing, and distributing the Class B Shares and for servicing these shares. Under the plan, the Distributor is obligated to pay Service Agents for administration with respect to Class B Shares, for servicing Class B shareholders who are also their clients, and/or for distribution of Class B shares. The fees payable to the Distributor for the above services are payable without regard to actual expenses incurred. The provision of services under the Account Maintenance Plan will not duplicate the services that will be provided to the Fund by the Investment Adviser, the Sub-Investment Adviser, the Administrator, the Transfer Agent or the Custodian.

9. The Fund will bear the costs of preparing and providing prospectuses and statements of additional information used for regulatory purposes and for distribution to existing holders of both Class A and Class B Shares. Under the Account Maintenance Plan, Class B Shares will bear the costs of preparing, printing, and distributing prospectuses and statements of additional information used for other purposes and the costs associated with implementing and offering the Account Maintenance Plan (such as costs of printing and mailing service agreements), the aggregate of such amounts not to exceed in any fiscal year of the Fund the greater of $100,000 or .005 of 1% of the value of the Fund's average daily net assets attributable to the Class B Shares. These costs are in addition to the Account Maintenance Fee described in item 7 above (both fees are collectively referred to as "Account Maintenance Fees").

10. The net asset value of any of the Class A Shares and Class B Shares would be computed on the same days and at the same times, and dividends on each of the Class A Shares and the Class B Shares would be declared and paid on the same days and at the same times. With the exception of Account Maintenance Fees, all Fund expenses will be borne on a *pro rata* basis by each class on the basis of the relative net asset values of the respective classes. However, because the Account Maintenance Fees would be borne by the Class B Shares, the net income per share of and dividends payable per share to the Class B Shares may be lower than those paid on the Class A Shares. As a result, the net asset value per share attributable to Class A Shares may be higher than the net asset value attributable to Class B Shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent that the proposed arrangement may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the arrangement may violate the provisions of 18(i). Applicants believe that the proposed arrangement does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Fund since all such shares will participate *pro rata* in all of the Fund's income and expenses with the exception of the Account Maintenance Fees.

2. Applicants assert that investors will not be given misleading impressions as to the safety or risk of the Class A and Class B Shares and the nature of Fund shares will be not be rendered speculative by virtue of the existence of the two classes of shares because neither class will have any liquidation preference over the other, neither class will be protected by any reserve or other account, and the characteristics of both classes will be fully disclosed in the Fund's prospectus.

3. Applicants state that the Fund's capital structure under the proposed arrangements will not include any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of the Fund will be borne equally by all of its shareholders. The Fund's capital structure will not enable insiders to manipulate the expenses and profits between the classes since (a) the Fund is not organized in a pyramid fashion, (b) all the expenses and profits of the Fund,

[1] Shareholders who purchase their shares prior to obtaining the exemptive relief necessary to add a new class of shares and implement the Account Maintenance Plan will not be requested to bear such costs.

except Account Maintenance Fees, will be borne *pro rata* by each class on the basis of the relative net asset values of the respective classes, and (c) all shareholders will have equal voting rights, except with respect to the Account Maintenance Plan.

4. Applicants argue that the proposed arrangement raises no valuation concerns. Moreover, applicants will implement steps to ensure that the respective yields of the Fund's classes are fairly disclosed in the Fund's prospectus and shareholder reports.

5. Applicants believe that the proposed arrangement will facilitate the distribution of shares by a Fund. In addition, applicants believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in open-end management investment companies since such costs would, potentially, be spread over a greater number of shares than they would otherwise.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Class A Shares and Class B Shares will represent interests in the same portfolio of investments in the Fund and be identical in all respects except as described below. The only differences between the Class A and Class B Shares will be as follows: (a) The Class A Shares and Class B Shares would have different class designations; (b) the Class B Shares would pay all Account Maintenance Fees payable under the Account Maintenance Plan; and (c) only the beneficial holders of Class B Shares would be entitled to vote on matters pertaining to the Account Maintenance Plan.

2. The directors of the Fund, including a majority of the independent directors, will approve the proposed arrangement. The minutes of the meetings of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the proposed arrangement will reflect in detail the reasons for the directors' determination that the proposed arrangement is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the two classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Investment Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Investment Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Account Maintenance Plan relating to the Class B Shares will be submitted to the public shareholders of Class B Shares for approval at the next meeting of shareholders after the initial issuance of the Class B Shares. Such meeting is to be held within 16 months of the date that the amendment to the registration statement necessary to offer Class B Shares first becomes effective.

5. The directors of the Fund will receive quarterly and annual statements concerning expenditures pursuant to the Account Maintenance Plan, complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of Class B Shares or the services provided with respect to Class B Shares will be used to justify any Account Maintenance Fees charged to the Class B Shares. Expenditures not related to the sale of Class B Shares or the services provided with respect to Class B Shares will not be presented to the directors to justify any Account Maintenance Fees attributable to the Class B Shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that the Account Maintenance Fees relating to the Class B Shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert") who has rendered a report to the Fund, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon written request to the Fund by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Fund has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Fund will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Fund with respect to the proposed arrangement will be set forth in guidelines which will be furnished to the directors.

10. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in its prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. Because Class A Shares will no longer be sold (except for the reinvestment of dividends and other

distributions on Class A Shares) after the effectiveness of the N-1A Amendment if the exemptive order requested hereby is granted, any advertisement or sales literature used by the applicants relating in whole or in part to the period commencing with the sale of Class B Shares (other than the Fund's prospectus) will for such period be based upon only the expenses and/or performance data applicable to the Class B Shares. Similarly, the information provided by the applicants for publication in any newspaper or similar listing of the Fund's net asset value or public offering price will present only information for the Class B Shares.[2]

11. The applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Fund may make pursuant to the Account Maintenance Plan in reliance on this exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13939 Filed 6-12-92; 8:45 am]

BILLING CODE 8010-01-M

[2] Applicants note that disclosure concerning respective distribution arrangements, services, fees, sales load and exchange privileges applicable to Class A Shares will not be included in every prospectus because Class A will no longer be sold except for the reinvestment of distributions on Class A Shares.

[File No. 1-6901]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Fort Howard Corporation, 14⅛ percent Junior Subordinated Discount Debentures Due November 1, 2004; 14⅝ percent Junior Subordinated Debentures Due November 1, 2004

June 9, 1992.

Fort Howard Corporation ("Company") has filed an application with the Securities and Exchange Commission, ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, the Board of Directors considers withdrawal from listing and registration of the Debentures on the PSE to be warranted because:

(i) The Debentures were listed on the PSE in 1988 in order to facilitate compliance by the Company with certain State "blue sky" requirements in connection with their original issuance, and these objectives were met at the time or original issuance and are no longer relevant;

(ii) Since the original issuance of the Debentures in November of 1988, trading volume has been and continues to be very low;

(iii) Since issuance of the Debentures there has been and continues to be a limited number of registered holders of each of the Debentures;

(iv) The Company appears to meet at least one of the PSE's delisting standards since it has no class of equity securities held by 500 or more persons;

(v) Delisting of the Debentures would result in there being no requirement to comply with the proxy rules promulgated under the Act, as amended, in the future in connection with any solicitation of consents relating thereto; and

(vi) The Company seeks to avoid the expense and administrative burden associated with continued listing of the Debentures on the PSE.

Any interested person may, on or before June 30, 1992, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13937 Filed 6-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18763; 812-7849]

Government Securities Equity Trust, et al.; Notice of Application

June 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Government Securities Equity Trust (the "Trust"); Delaware Management Company, Inc. ("Delaware Management"); Delaware Distributors, Inc. ("Delaware Distributors"); Delaware Group Trend Fund, Inc., Delaware Group Tax-Free Fund, Inc., Delaware Group Decatur Fund, Inc., Delaware Group Government Fund, Inc., Delaware Group Delaware Fund, Inc., Delaware Group Delchester High-Yield Bond Fund, Delaware Group DelCap Fund, Inc., Delaware Group Treasury Reserves, Inc., DMC Tax-Free Income Trust-PA, Delaware Group Pennsylvania Tax-Free Trust, Delaware Group Value Fund, Inc., and Delaware Group Global & International Funds, Inc., on behalf of themselves and any series or portfolio thereof (other than money market or no-load funds), and any open-end management investment companies (including any portfolios or series thereof), other than money market or no-load funds, not presently advised by Delaware Management or having as their distributor Delaware Distributors, but that may in the future be advised by or have as their distributor Delaware Management or Delaware Distributors or any entity controlling, controlled by, or under common control with Delaware Management or Delaware Distributors (the "Funds"); and Prudential Securities Incorporated (the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) to grant exemptions from sections 12(d)(1), 14(a), 19(b), and 22(d) and rule 19b-1; under sections 11 (a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d-1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order: (a) permitting series of the Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting waiver of any sales load otherwise applicable on Fund shares that the Trust has purchased; (e) permitting certain offers of exchange involving the Trust; and (f) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on January 13, 1992, and amended on

April 23, 1992 and May 18, 1992. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Prudential Securities Incorporated, One Seaport Plaza, 199 Water Street, New York, NY 10292; Delaware Management Company, Inc., One Commerce Square, 40th floor, Philadelphia, PA 19103; Other applicants, 1818 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Each Fund has entered into an investment advisory or management agreement with Delaware Management, or one of its affiliates, and a distribution agreement with Delaware Distributors under which Delaware Distributors acts as its principal underwriter. Delaware Management is an investment advisor registered under the Investment Advisers Act of 1940. Delaware Distributors is a broker-dealer registered under the Securities Exchange Act of 1934.

2. The existing Funds have adopted rule 12b-1 plans. None of the Funds currently impose any deferred sales charges.

3. The Trust will be registered under the Act as a unit investment trust and will offer units in series ("Trust Series"), each of which will contain shares of one of the Funds that is normally offered with a sales load and U.S. Government zero coupon obligations ("zero coupon obligations"). The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a trust indenture which will incorporate a master trust agreement relating to the entire Trust and which will name a qualified bank as trustee (the "Trustee").

4. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors, including: depositing fund shares in the Trust; acquiring zero coupon obligations and depositing them in the Trust; arranging for the evaluation of the zero coupon obligations (but not shares of the Funds since the Funds calculate net asset value daily); offering units to the public; and maintaining a secondary market in units (although such Sponsor would not be obligated not do so). The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for units which will represent the entire ownership of the Trust Series.

5. Trust units will be offered for sale to the public through the final prospectus by the Sponsor following the declaration of the effectiveness of the registration statement for the securities of the Trust Series under the Securities Act of 1933 and clearance by the blue sky authorities of the various states. Trust Series are intended to be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares.

6. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional securities deposited in the Trust Series subsequent to the initial date of the deposit in connection with the sale of these additional units will maintain the proper proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. Fund shares may from time to time be redeemed under the limited circumstances set forth in the trust indenture.

7. The sales load that would normally be applicable on sales of underlying Fund shares will be waived. Moreover, the Sponsor will rebate to the Trustee any payments it receives in respect of units under any rule 12b-1 plans adopted by the Funds.

8. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the trust and/or had any value at the maturity of the Trust Series.

9. The Sponsor intends to maintain secondary market for Trust units based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value and further, that zero coupon obligations cannot be sold to meet Trust expenses.

10. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect

to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming such shares and, second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in Fund shares at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Fund and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

Applicants' Legal Conclusions

1. Section 12(d)(1) of the Act generally limits acquisition by an investment company, such as the Trust, of shares of a registered investment company, such as a Fund, in the following ways: (1) the acquiring company may not acquire more than 3% of the voting stock of the acquired company; (2) the securities of the acquired company many not amount to more than 5% of the value of the assets of the acquiring company; and (3) securities of the acquired company and all other investment companies may not have more than 10% of the assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. This proposal is structured to eliminate the pyramiding of expenses. No sales charge or distribution fee will be imposed on Fund shares deposited in the Trust. No investment advisory fee will be charged with respect to the Trust since it will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Trust. Another concern addressed by 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund that are held by a Trust will be voted by the Trustee in the same proportion as all other shares of that Fund not held by the Trust are voted. Another concern underlying section 12(d)(1) is the possibility of large-scale redemptions of shares of the underlying fund. The Trust Agreement will, however, permit the Trust to sell shares only when necessary to meet the redemptions or pay Trust expenses. Neither the Trustee nor the Sponsor will have any discretionary authority to determine when shares of the underlying Funds are to be sold or to substitute shares of another Fund for those deposited in the Trust. The threat to a Fund from large-scale redemptions is further reduced by the fact that each Trust Series is prohibited from acquiring more than 10% of the outstanding shares of any Fund.

3. Section 14(a) requires that investment companies have $100,000 of net worth prior to making a public offering. Since the Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and Fund shares prior to the date on which effectiveness is requested for the Trust's registration statement under the Securities Act of 1933, applicants believe that each Trust will comply fully with section 14(a). Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants request an exemption on the grounds that such an exemption is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants intend to comply in all respects with the requirements of rule 14a-3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

4. Section 19(b) and rule 19b-1 provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income. Applicants request an exemption from rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust's regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b-1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust since the Trust and its Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.* the tendering of units for redemption). For the reasons stated above, and because distributions of capital are clearly indicated in accompanying reports to unitholders as a return of principal and are relatively small in comparison to normal dividend distributions, the danger of confusion is not present in the operations of the Trust.

5. Section 22(d) generally prohibits a registered investment company from selling its shares except at a current offering price described in the prospectus. Applicants request an exemption from the provisions of section 22(d) to permit the waiver of any otherwise applicable sales load where: (a) the Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust, and distributions from a Trust made during the existence of the Trust, have been reinvested by a unitholder in additional Fund shares; and (c) a Trust at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust to a registration in the unitholder's name in lieu of redeeming such shares. The imposition of any sales load upon sales or redemption of Fund shares held by a Trust would be duplicative to investors in the Trusts and, accordingly, would raise questions under section 12(d)(1) with regard to the pyramiding of expenses. Waiver of the sales load will not harm the Funds or remaining shareholders. All Funds whose shares are subject to any sales load will fully disclose the waiver provision in their prospectuses.

6. Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter for such company to make or cause to be made certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to section 11 (a) and (c) of the Act approving the termination option described below. At the termination of the Trust, unitholders still holding units at maturity will have the option of either

(a) transferring the registration of their proportionate number of fund shares from the Trust to a registration in the investor's name, or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or (b) receiving a cash distribution. This termination option will give unitholders the flexibility of a choice. The exchange will be made on the basis of the net asset value of the Fund shares.

7. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of, or principal underwriter for a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Neither the Trust nor any Fund will participate on a basis different from or less advantageous than any other participant. Applicants have structured the Trust to eliminate as many potential areas of concern involving affiliated transactions as possible. There will be no duplication of sales charges or distribution fees with respect to the Fund shares and Trust units. In addition, there will be no overlap of fees for portfolio management, no management fee will be charged at the Trust level, and no evaluation fee will be assessed with respect to that portion of a Trust's portfolio represented by Fund shares. The proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on Fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. No one Trust Series will, at the time of any deposit of any Fund shares, hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respect with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

6. Shares of a Fund which are held by a Trust Series will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of the Fund not held by the Trust are voted.

7. Any shares of the Funds deposited in any Trust Series or any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

8. Applicants agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13940 Filed 6–12–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18759; 812–7863]

Strong Discovery Fund II, Inc., Strong Special Fund II, Inc., et al.

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for an Order of Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Strong Discovery Fund II, Inc. ("Strong Discovery"), Strong Special Fund II, Inc. ("Strong Special", and together with Strong Discovery, the "Funds"), Strong/Corneliuson Capital Management, Inc. (the "Adviser") and other similar funds which the Adviser may manage in the future ("Other Funds") (the Funds, the Adviser and the Other Funds are collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) of the 1940 Act for exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of both the Funds and the Other Funds to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies").

FILING DATE: The application was filed on February 7, 1992 and an amended and restated application was filed on March 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on June 29, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: Helge Krist Lee, Strong/Corneliuson Capital Management, Inc., 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, at (202) 272–5415, or Wendell Faria, Deputy Chief, at (202) 272–2060, Office of Insurance products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are incorporated as separate corporations under Wisconsin law. Each of the Funds filed registration statements on Forms N–1A and N–8A with the Commission to register as a diversified, open-end management investment company under the 1940 Act. The Adviser serves as investment adviser to the Funds.

2. The Funds intend to offer their shares to the separate accounts of Participating Insurance Companies for the purpose of funding variable annuity

and variable life insurance contracts (the "Contracts").

3. The use of a common management investment company as the investment medium of both variable annuity and variable life insurance separate accounts of a single insurance company (or two or more affiliated insurance companies) is referred to as "mixed funding". The use of a common management investment company as the investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund a variable annuity separate account of one insurance company and the variable annuity or variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. Applicants request relief from section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding. Rule 6e–2(b)(15) precludes mixed and shared funding while Rule 6e–3(T)(b)(15) permits mixed funding but precludes shared funding. Applicants also request that the Commission, pursuant to its authority in section 6(c) of the 1940 Act, extend relief to a class consisting of insurers and separate accounts investing in the Funds and the Other Funds (and principal underwriters and depositors of such separate accounts).

2. Applicants assert that insurance companies have been reluctant to offer variable insurance contracts for various reasons, including: The cost of organizing and funding an investment medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of public name recognition as investment experts. Applicants argue that use of the Funds as investment vehicles for mixed and shared funding would minimize the reservations of these insurance companies because the companies would benefit from the investment and administrative expertise of the Adviser as well as from the cost efficiency, diversification and investment flexibility afforded by a large pool of assets. Applicants further assert that allowing mixed and shared funding would permit use of the Funds as investment media by a number of insurance companies. This, in turn, Applicants argue, would increase competition due to expanded availability of the Funds and result in product variation. Applicants state that contract owners would benefit because mixed and shared funding would eliminate a significant amount of the costs of establishing and administering separate funds.

3. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Under Rules 6e–2(b) (15) and 6e–3(T)(b)(15), these disqualification standards apply only to affiliated individuals or companies that directly participate in the management of the underlying investment company.

4. Applicants state that the exemptions from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply the provisions of section 9(a) to the many individuals in a large insurance company, most of whom would have no connection with the investment company funding the Contracts. Since the Participating Insurance Companies are not expected to have management or administrative roles in either the funds or the Other Funds, Applicants assert that applying the restrictions of section 9(a) to the Funds or to the Other Funds would serve no regulatory purpose; rather, such restrictions would instead reduce the net rates of return realized by contract owners because of increased monitoring costs.

5. Similarly, Applicants believe that the limits on pass-through voting privileges contained in Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) should continue to apply under mixed and shared funding. Generally, a contract owner may vote on, among other things, changes in a fund's investment policies (section 13(a)), changes in a fund's investment adviser or approval of an advisory contract (section 15(a)), and changes in a fund's principal underwriter or approval of the underwriting contract (section 15(b)). Both Rules 6e–2 and 6e–3(T), however, permit an insurance company to disregard the voting instructions of contract owners in certain cases. When required to do so by an insurance regulatory authority, an insurance company may disregard voting instructions with respect to the investments of an underlying fund or any contract between a fund and its investment adviser. Additionally, an insurance company may disregard voting instructions if, in good faith, it determines that the requested change would violate state law or result in investments inconsistent with the investment objectives of the separate account. An insurance company similarly may overrule contract owners' voting instructions to change an investment adviser if, in good faith, the insurance company concludes that the new advisory fee would exceed the rate which may be charged against the separate account assets or that the proposed adviser would employ investment techniques inconsistent with the investment objectives of the investment company or the general techniques used by the current adviser.

6. Exemption from the pass-through voting requirements is recognized as necessary to ensure both solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the insurer to act when certain proposals reasonably could be expected to increase the risk undertaken by the insurer. Applicants assert that these considerations are no less important or necessary when the insurance company funds its separate account obligations with an investment company that is used in connection with mixed and shared funding. Applicants state that the Commission, by permitting mixed and shared funding, would in no way compromise its regulatory goals or the goals of the state regulatory bodies; rather, mixed and shared funding may help to eliminate needless duplication of start-up and administrative expenses and allow increases in a fund's assets that may in turn result in economies of scale.

7. Applicants assert that shared funding does not create any issues not already existing where a single insurance company offers its product in several states. For example, a state insurance regulatory authority might require action inconsistent with other states in which the insurance company offers its product. Applicants assert that, in this respect, it appears that shared funding by unaffiliated insurers is no different than the use of the same investment company as the funding vehicle by affiliated insurers, which is currently permitted under the rules. With regard to mixed funding, Applicants argue that, because the Contracts are designed as long-term investment programs, a fund's investment policies should not be materially different from what they would have been had the investment company funded only one type of insurance product.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Directors of each Fund (singularly, a "Board", together, the "Boards") will consist of persons who are not "interested persons" of Funds, as such term is defined by the 1940 Act.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Fund are managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners or by contract owners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating Insurance Companies and the Adviser will report any potential or existing conflicts to the Boards. Participating Insurance Companies will be responsible for assisting the Boards in carrying out their responsibilities by providing the Boards with all information reasonably necessary for the Boards to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all insurers investing in the Funds under their agreements governing participation in the Funds.

4. If it is determined by a majority of the Board of a Fund or a majority of such Board's disinterested directors that a material irreconcilable conflict exists, the relevant Participating Insurance Companies, shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Funds and reinvesting such assets in a different investment medium or submitting the questions of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any particular group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard variable contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Funds' election, to withdraw its separate account's investment in the Funds, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds and these responsibilities will be carried out with a view only to the interests of the variable contract owners. For purposes of this condition 4, a majority of the disinterested members of the Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Funds be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contract owners.

5. A Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners to the extent the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all of the separate accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Funds. The insurance company will vote shares, for which it has not received voting instructions as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

7. All reports received by a Board of potential or existing conflicts, and all such Board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of such Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. Each of the Funds shall disclose in its respective prospectus that (a) shares of the Fund are offered in connection with mixed and shared funding, (b) mixed and shared funding may present certain conflicts of interest and (c) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken in response to such conflicts.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13938 Filed 6-12-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18760; 812-7759]

SunAmerica Capital Appreciation Fund, Inc., et al.; Application

June 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: SunAmerica Capital Appreciation Fund, Inc., SunAmerica Cash Fund, SunAmerica Equity Portfolios, SunAmerica Income Plus Fund, Inc., SunAmerica Income Portfolios, SunAmerica Money Market Securities, Inc., SunAmerica Multi-Asset Portfolios, Inc., and SunAmerica Fund Group (other than the SunAmerica U.S. Government Fund series and the SunAmerica Precious Metals Fund series) (collectively, the "Group A Funds"); Home Investors Government Income Fund, Inc., Selected Tax-Exempt Real Estate Income Pooled Shares portfolio of SunAmerica Tax Free Portfolios, Anchor Series Trust, SunAmerica U.S. Government Securities Fund series and SunAmerica Precious Metals Fund series of SunAmerica Fund Group (collectively, the "Group B Funds"); all investment companies (the "future SAAMCo Funds") for which SunAmerica Asset Management Corp. ("SAAMCo") or any future investment adviser or sub-adviser that is a direct or indirect, wholly-owned subsidiary of Broad, Inc. (the "Broad Subsidiaries") will act in the future as investment adviser; all Future SAAMCo Funds for which Wellington Management Company ("Wellington") will act as subadviser; SAAMCo; and Wellington. SAAMCo, the Broad Subsidiaries and Wellington are collectively referred to herein as the "Adviser." The Group A Funds, the Group B Funds, the Future SAAMCo Funds and, where applicable, separately organized portfolios within each Fund are collectively referred to herein as the "Funds."

RELEVANT 1940 ACT SECTION: Exemption requested under section 17(d) of the 1940 Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to participate in one or the other of two joint accounts to be used to enter into repurchase agreements.

FILING DATES: The application was filed on July 22, 1991, and an amendment to the application was filed on February 25, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer'interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o SunAmerica Asset Management Corp., 1733 Third Avenue, 3d Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock Jr., Special Counsel, at (202) 272-3030 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the existing Funds is a registered open-end, management investment company under the 1940 Act. SAAMCo., a wholly-owned subsidiary of Broad Inc., serves as sponsor and investment adviser or manager to all the Funds. Wellington serves as sub-adviser to the Group B Funds.

2. Each Fund frequently has uninvested cash balances at the end of its business day, which, in the normal course of business are invested in short term investments, including repurchase agreements, in order to provide liquidity for and earn additional income for the Fund. At the present time, the Adviser must separately pursue, secure and implement such investments in repurchase agreements, resulting in certain inefficiencies and limiting the return that some or all of the Funds could otherwise achieve.

3. The Funds now wish to establish two joint accounts into which they may deposit some or all of their cash balances needed for repurchase agreements. One of the joint accounts ("Joint Account A") will be created for participation by Group A Funds and any other Funds for which SAAMCo (or the Broad Subsidiaries, as the case may be) serves as investment adviser, but for which Wellington does not serve as sub-adviser. The second joint account ("Joint Account B") will be created for the use of the Group B Funds and any other Funds sub-advised by Wellington. It will be necessary to create two joint accounts because SAAMCo provides investment advice for repurchase agreements to the Group A Funds, for which it is investment adviser, and Wellington provides investment advice for repurchase agreements with respect to the Group B Funds, for which it is sub-adviser.

4. All of the Funds are presently authorized to invest in repurchase agreements. SAAMCo and Wellington have procedures for negotiating daily repurchase agreement investments that are substantially the same. On behalf of the Funds, each morning the money market trading desk begins negotiating the interest rate for repurchase agreements for that day and identifying the securities required as collateral. Only suitable U.S. government obligations, i.e., obligations guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities are held as collateral. The estimated amount of the required collateral is based on preliminary information indicating the amount of the current day's available cash.

5. The Funds will invest only those assets in the joint accounts which, in the absence of the joint accounts, would be available to be invested in repurchase agreements. A Fund's decision to use one of the joint accounts will be based on the same factors as the Fund's decision to enter into any repurchase agreement. These factors would primarily be the yield and liquidity of the contemplated repurchase agreement and the creditworthiness of the repurchase agreement contra-party.

6. After the conclusion of its daily trading activity, each Fund will transfer cash it intends to invest to the appropriate joint account. The daily balance of each joint account will be used to enter into one or more large repurchase agreements in a total amount approximately equal to the aggregate daily balance in that joint account.

7. In connection with the use of repurchase transactions, each Fund has established the same systems and standards. These standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983), include creditworthiness standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements be fully collateralized at all times. Any joint repurchase agreement transaction entered into through the proposed joint accounts will comply with the standards and guidelines set forth in the above-referenced Release No. 13005 and any other existing and future positions taken by the SEC or its staff by rule, release or otherwise relating to joint repurchase agreement transactions.

8. Although the joint accounts will each seek to enter into only one repurchase agreement, it may be

necessary to make more than one such investment because many of the Funds are limited to investing no more than a stated percentage of their assets with any single issuer (other than U.S. governmental issuers), dealer or bank. Where a fund subject to a percentage restriction invests more than that percentage of its assets in a joint account, the joint account will have to enter into more than one repurchase agreement in order to avoid causing such Fund to violate such percentage restriction. Because it would be unusual for most of the Funds to have a high percentage of their respective assets in repurchase agreements, it is not expected that more than three repurchase agreements will be entered into by each of the joint accounts, except under unusual circumstances.

Applicants' Legal Analysis

1. Each Fund, by participating in one of the proposed joint accounts, and the Adviser, by managing the proposed joint accounts, could be deemed to be joint participants in a transaction within the meaning of section 17(d) of the 1940 Act, and each of the proposed joint accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1 under the 1940 Act.

2. The Board of Directors/Trustees of each of the Funds has considered the proposed joint accounts and determined that the use of the applicable joint account will be beneficial to each Fund that invests or could invest in repurchase agreements for the following reasons: (a) The Funds will collectively save approximately $70,000 in yearly transaction fees at present levels by substituting relatively few transactions for the transactions that are necessary currently; (b) under most market conditions it is possible to negotiate a rate of return on large repurchase agreements that is greater than the rate of return that can be negotiated for smaller repurchase agreements; (c) by reducing the number of trade tickets, the mechanism by which the Funds enter into repurchase agreements will be simplified with a reduction in the opportunities for error; and (d) an institution entering into a large repurchase agreement generally is able and willing to increase the amount covered by such an agreement near the end of a day.

3. The proposed method of operating the joint accounts will not result in conflicts of interest between or among any of the Funds or between a Fund and its Adviser. Applicants believe that the operation of the joint accounts will be free of any inherent bias favoring one Fund over another. They have also considered that, although the Adviser will gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Funds and their shareholders because the joint accounts may earn higher returns for the Funds and will be a more efficient way of administering daily investment transactions.

4. Applicants believe that future participation in the joint accounts by one or more Funds which are not presently advised by the Adviser, whether or not such Funds are currently in operation, would be desirable. Applicants represent that future Funds will be required to participate in the applicable joint account on the same terms and conditions as the existing Funds have set forth herein.

5. Each Fund will participate in the applicable joint account on the same basis as every other Fund in conformity with its investment objectives and restrictions.

Applicants' Conditions

As express conditions to obtaining an exemptive order, Applicants agree to operate the joint accounts according to the following procedures:

1. A separate custodial cash account will be established into which each Fund will cause some or all of its net cash balances intended for repurchase agreements to be deposited daily. After the conclusion of its daily trading activity, each Fund will transfer cash it intends to invest to the appropriate joint account. The joint accounts will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that monies from the Funds will be deposited on a commingled basis. The joint accounts will not have any separate existence which will give rise to indicia of a separate legal entity. The sole function of each of the joint accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management by each Fund of its uninvested cash balances.

2. Cash in the joint accounts will be invested in repurchase agreements collateralized by suitable U.S. government obligations, i.e., obligations guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments. Any such repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven calendar days.

3. All investments held by the joint accounts will be valued on the basis of amortized cost.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of a joint account credited to another Fund, no Fund will be allowed to create a negative balance in a joint account for any reason, although it will be permitted to draw down its entire balance at any time. A Fund's decision to invest in the applicable joint account will be solely at the Fund's option. No Fund will be obligated to invest in the joint account or maintain any minimum balance therein. A Fund may withdraw all or a portion of its investment in the joint account at any time. In addition, each Fund will retain the sole rights of ownership of any of its assets invested in the joint account, including interest payable on such assets. Each Fund's investment in a joint account will be documented daily on the books of each Fund as well as on the books of the Fund's custodian. Applicants believe that a Fund's investment in a joint account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, of any other participant Fund in that joint account. Each Fund's liability on any repurchase agreement entered into by the applicable joint account will be limited to its proportionate interest in such repurchase agreement.

5. Each Fund will participate in the income earned or accrued in the joint account in which it has invested, including all instruments held by that joint account, on the basis of the Fund's percentage of the total amount in the joint account on any day represented by its share of the joint account.

6. SAAMCo (or the Broad Subsidiaries, as the case may be) and Wellington will each administer the investment of the cash balances in and operation of Joint Account A and Joint Account B, respectively, as part of their duties under existing or future investment advisory arrangements with each Fund entitled to participate in the respective accounts, and will not collect any additional fee for the management of those accounts. (The Adviser will collect fees in accordance with each Fund's respective investment advisory arrangements.)

7. The Board of Directors/Trustees of the Funds will evaluate the arrangements of the applicable joint account annually, and will continue the joint account only if they determine that

there is a reasonable likelihood that it will benefit the relevant Funds and their shareholders.

8. The administration of the joint accounts will be within the fidelity bond coverage required by section 17(g) of the 1940 Act and rule 17g–1 thereunder.

9. Each Fund relying upon rule 2a–7 under the 1940 Act for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements in the joint account used by such Fund for the purpose of computing such Fund's average portfolio maturity with respect to the portion of its assets held in such joint account.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13941 Filed 6-12-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Survey Worksheet
SBA Form No.: SBA Form 987
Frequency: On occasion
Description of Respondents: Individuals, businesses and public officials within an area requesting a disaster declaration.
Annual Responses: 4,000
Annual Burden: 333

Title: Transaction Report on Loans Serviced by Lenders
SBA Form No.: SBA Form 172
Frequency: Monthly
Description of Respondents: Small Business Administration Participating Lenders
Annual Responses: 53,148
Annual Burden: 8,504

Title: SBA Request for Counseling
SBA Form No.: SBA Form 641
Frequency: On occasion
Description of Respondents: Individuals requesting management counseling from SBA
Annual Responses: 500,000
Annual Burden: 83,000

Title: Management Training Report
SBA Form No.: SBA Form 888
Frequency: On occasion
Description of Respondents: Attendees at SBA sponsored training
Annual Responses: 16,000
Annual Burden: 2,656.

Dated: June 8, 1992.

Cleo Verbillis,

Acting, Chief, Administrative Information Branch.

[FR Doc. 92-13955 Filed 6-12-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0534]

Creditanstalt Capital Corporation

Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1992)), Creditanstalt Capital Corporation, 245 Park Avenue, New York, New York 10167, incorporated under the laws of the State of Delaware, has surrendered its license, No. 02/02-0534 issued by the SBA on December 21, 1989.

Creditanstalt Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Creditanstalt Capital Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-13954 Filed 6-12-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-5356]

Commonwealth Enterprise Fund, Inc.; Issuance of a Small Business Investment Company License

On January 31, 1992, a notice was published in the **Federal Register** (57 FR 922379) stating that an application has been filed by Commonwealth Enterprise Fund, Inc., 10 Post Office Square, Suite 1090, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1992)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 2, 1992 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-5356 on May 28, 1992, to Commonwealth Enterprise Fund, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 1, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-13951 Filed 6-12-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0193]

Legacy Fund Ltd. Partners; Issuance of a Small Business Investment Company License

On January 10, 1990, a notice was published in the Federal Register (56 FR 1050) stating that an application has been filed by Legacy Fund Ltd. Partners, 815 Connecticut Ave., NW. Washington, DC 20006, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies

(13 CFR 107.102 (1992)) for a license as a small business investment company.

Interested parties were given until close of business February 10, 1991 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0193 on April 16, 1992, to Legacy Fund Ltd. Partners to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated May 15, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13954 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 07051100]

Springfield Capital, Inc. Application for a Small Business Investment Company License

Notice is hereby given of the filling of an application with the Small Business Administration (SBA) pursuant § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) by Springfield Capital, Incorporated (Applicant) 328 South Atlantic Blvd., suite 200B, Monterey Park, California, 91754, for a license to operate as a corporate small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.) and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
Li Pei Wu, 2126 Camino San Rafael, Glendale, CA 91206	25
Shirley Chuang, 16700 Yukon Ave., #225, Torrance, CA 90504	25
Johnny Wei-Chao Kao, 10520 Wilshire Blvd. #1103, Los Angeles, CA 90024	25
Huei Ping Chen, 5955 Ocean Terrace Drive, Rancho Palos Verdes, CA 90274	25

Indirect Ownership

Springfield Capital, Incorporated will be managed by Mr. Paul Bor-Jun Ding. The officers and directors of the Applicant will be as follows:

Name	Title	Relationship to manager
Paul Bor-Jun Ding, 13308 Tree Top View Court, St. Louis, MO 63141.	President, Chief Financial Officer, and Director.	N/A.
Chuan Yin Cheng, 4418 Tomik Circle, Rosemead, CA 91770.	Secretary	None.
Li Pei Wu, 2126 Camino San Refael, Gendale, CA 91206.	Director	Brother-in-Law.
Shirley Chuang, 16700 Yukon Avenue, #225, Torrance, CA 90504.	Director	None.
Johnny Wei-Chao Kao, 10520 Wilshire Blvd., #1103, Los Angeles, CA 90024.	Director	None.
Huei Ping Chen, 5955 Ocean Terrace Drive, Rancho Palos Verdes, CA 90274.	Director	None.

Shirley Chuang is currently a director and shareholder of Myriad Capital, Incorporated, an SSBIC located in Monterey Park, California. The Applicant, a corporation organized under the provisions of the General Corporation Law of California, and duly qualified to do business in the State of California, and will begin operations with a capitalization of $2,000,000. Initially, the applicant will conduct its activities solely in Southern California and will be a source of equity capital and long term funds for qualified socially or economically qualified small business concerns. The Applicant may later expand the business to other geographical areas.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Monterey Park, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 7, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92–13953 Filed 6–12–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 5, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48171.

Date filed: June 1, 1992.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 571 (Change The Denomination of Passenger R–1 Tariffs In Cayman Islands From KYD To USD)

Mail vote 572 (Change The Denomination of Cargo Tariffs R–2 In Cayman Islands From KYD to USD)

Telex dated May 29, 1992–Technical Correction To MV572 And Declaration Of Adoption.

Proposed Effective Date: July 1, 1992.

Docket Number: 48172.

Date filed: June 1, 1992.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 573 (Within South America Economy & Excursion Fares) r–1–061d r–2– 070j r–3– 070vv.

Proposed Effective Date: June 15, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–13944 Filed 6–12–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 5, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process

the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48173.

Dated filed: June 1, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1992.

Description: Application of Key Airlines, Incorporated, pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to permit it to provide scheduled air transportation of persons, property and mail between Savannah, Georgia, on the one hand, and Cancun and Cozumel, Mexico, and a point or points in Aruba, the Bahamas, Antigua, the Netherlands Antilles, and Jamaica, on the other.

Docket Number: 48176.

Date filed: June 3, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 1, 1992.

Description: Application of Traslados, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for an amendment to its existing foreign air carrier permit authorizing it to engage in nonscheduled and charter air transportation of property and mail between Guatemala City, Guatemala, and Miami, Florida. By this application, Traslados seeks the removal of condition (2) of its permit, so that is may conduct U.S. flights using its own aircraft.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–13945 Filed 6–12–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Flight Crewmember Flight/Duty/Rest Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Flight Crewmember Flight/Duty/Rest Requirements Working Group.

SUMMARY: Notice is given of the establishment of a Flight Crewmember Flight/Duty/Rest Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Williams W. Edmunds, Jr., Air Line Pilots Association International, P.O. Box 1169, Herndon, VA 22070; telephone (703) 689–2270; fax number (703) 689–4370.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its May 12, 1992, meeting, the subcommittee established the Flight Crewmember Flight/Duty/Rest Requirements Working Group.

Specifically, the working group's task is the following:

To determine whether regulations pertaining to air carrier flight crewmember, flight, duty, and rest requirements are consistently interpreted and understood by the FAA, air carriers, and pilots. Evaluate industry compliance/practices regarding scheduling of duty, reserve, and rest periods and reports of excessive pilot fatigue as a result of such scheduling. If appropriate, develop recommendations for advisory material and/or a regulatory revision.

The Flight Crewmember Flight/Duty/Rest Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "FOR FURTHER INFORMATION CONTACT" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight Crewmember Flight/Duty/Rest Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 9, 1992.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92–13977 Filed 6–12–92; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Baton Rouge Municipal Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose a PFC at Baton Rouge Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 15, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Forth Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Iray Ledoux, of the Parish of East Baton Rouge, city of Baton Rouge at the following address: Baton Rouge Municipal Airport, Parish of East Baton Rouge, City of Baton Rouge, Suite 212, Terminal Building, Baton Rouge, Louisiana 70807.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of Baton Rouge, Baton Rouge Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW-610D, Airports Division, Southwest Region, Fort Worth, Texas 76193-0610, (817) 624-5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose a PFC at Baton Rouge Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 5, 1992, the FAA determined that the application to impose a PFC submitted by the city of Baton Rouge was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1992.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.
Proposed charge effective date: October 1, 1992.
Proposed charge expiration date: September 30, 1998.
Total estimated PFC revenue: $9,823,159.00.

Brief description of proposed project(s):

Land Acquisition of Parcel No. 5
Land Acquisition of Parcel No. 6
Terminal Concept Study
Noise Mitigation Program

Proposed class or classes of air carriers to be exempted from collecting PFC's:

1. Part 135 on-demand air taxis, both fixed wing and rotary,
2. Part 121 Supplemental Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW-610D, 4400 Blue Mound Road, Fort Worth, Texas 76193-0610.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Baton Rouge.

Issued in Forth Worth, Texas on June 5, 1992.

John M. Dempsey,
Manager, Airports Division.

[FR Doc. 92-13976 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Dane and Sauk Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 12 between the City of Middleton and Sauk City in Dane and Sauk Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905. Telephone (608) 264-5967

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve U.S. Highway 12 (USH 12) from the City of Middleton to Sauk City in Dane and Sauk Counties, a distance of about 29 km (18 miles).

Improvements to the corridor are considered necessary to provide for traffic demand and safety and the compatibility of the highway with the regional function of the USH 12 route. Alternates under consideration include: (1) *No-build*—this alternative assumes the continued use of the existing facility with sufficient maintenance provided to ensure its serviceability; (2) *Improve the Existing Roadway*—this alternative would provide for the reconstruction of the existing two-lane roadway with consideration given to improvements in substandard vertical and horizontal alignment; *Expressway*—this alternate would provide for a four-lane divided expressway along the existing rural corridor, with possible relocated horizontal alignment along portions of the route.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on June 3, 1992.

James L. Wenning,
District Engineer, Madison, Wisconsin.

[FR Doc. 92-13919 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Iowa and Lafayette Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that Environmental Impact Statement (EIS) will be prepared for the proposed improvement of USH 151 between Belmont and Dodgeville in Iowa and Lafayette Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905. Telephone (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement on a proposal to improve U.S. Highway 151 (USH 151) from west to the Village of Belmont to south of the City of Dodgeville, a distance of about 32.2 km (20 miles).

The improvement of USH 151 is being considered to provide for safe and efficient travel while enhancing the overall economic development potential for the USH 151 corridor from Dubuque, Iowa to Madison, Wisconsin. The Wisconsin Department of Transportation's Corridors 2020 Program, which provides a network of multi-lane highways serving statewide and regional transportation needs, includes this segment of USH 151 on the backbone network.

The existing facility is a rural two-lane roadway passing through the communities of the Village of Belmont and the City of Mineral Point. Alternates under consideration include: (1) Take no action; (2) improvements along the existing rural corridor, with possible relocated alignments along portions of the route; (3) bypass of the City of Mineral Point; and (4) bypass of the Village of Belmont.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. A series of public meetings will be held in the project corridor throughout the data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the hearing. As part of the scoping process, an interagency coordination meeting will be held. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted regarding the date and location of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 3, 1992.

James L. Wenning,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-13920 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92-01; No. 2]

Philatron International; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Philatron International (Philatron) of Santa Fe Springs, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act ("Safety Act") (15 U.S.C. 1381 *et seq.*) on the basis that a noncompliance with Federal Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety. Notice of receipt of the petition was published on January 17, 1992, and an opportunity afforded for comment (57 FR 2130).

Philatron determined that 45,411 air brake hose assemblies manufactured from January 1991 through September 30, 1991, do not comply with the oil resistance requirements of S7.3.4 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.4 requires that after immersion in ASTM No. 3 oil for 70 hours at 212 degrees Fahrenheit, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent. Philatron supported its petition with the following:

"There is no possibility for the interiors of the coiled tubing to become saturated with oil at any termperature; and specifically, there is no possibility under any condition for the items to be saturated with oil for 70 hours at a temperature of 212 [degrees Fahrenheit].

The compressors of all trucks are designed to pass compressed air, and not oil, through the coiled tubing. Any small quantities of oil which might travel with the compressed air are reduced in at least two (2) reservoirs (commonly referred to as the wet tank and the service tank) which are included in all trucks, and in which any moisture and any minute quantities of oil are removed from the compressed air passed through the tubing to the towed vehicles.

Moreover, virtually every truck today is also equipped with an air dryer which dries and purifies the compressed air before it enters the reservoirs. This dryer has a 99.9 percent oil removal efficiency.

There is also no possibility for the temperature of the compressor air passed through the tubing ever to be above ambient temperature at the inner area of the tubing. The compressed air is rapidly cooled as it travels from the compressor, and when it enters the air reservoirs it is cooled to ambient temperatures well before it reaches the tubing located further down the line.

Most if not all trucks today are equipped with an air dryer which is positioned between the compressor and the air reservoirs, normally 6 to 15 feet from the compressor. Virtually all trucks which are equipped with air dryers are also equipped with pre-cooling coils which pre-cool the air before it enters the air dryers. The dryers themselves cool the air. Again, it [sic] is no possibility that compressed air could exceed ambient temperature within the tubing.

There is also no possibility that the outer surface of the items when in use would ever come in contact with or be immersed in hot oil. This is because the items are located between the rear of the towing vehicle and the front of the towed vehicle at a significant distance from any sources of hot oil.

Additionally, there is no conceivable possibility of any quantity of hot oil being spilled on the items while the vehicles are at rest, and any small quantity of oil which might contact the items when the vehicles are in motion are cooled by the wind chill factor of the traveling vehicles to below ambient temperatures."

In addition to the above arguments, Philatron conducted the following tests to demonstrate what it believes to be a considerable margin of safety associated with the hoses in question with respect to oil resistance.

The first test consisted of air brake tubing with the coupling plugged at the end and immersed in ASTM No. 3 oil. Ambient temperatures ranged from 33 degrees Fahrenheit to 91 degrees Fahrenheit. After 3,310 hours, 138 days, the assembly was removed from the oil and subjected to a burst test. The tubing burst at 1,200 psi, well above Standard No. 106's requirement for burst strength of 800 psi.

The second test consisted of air brake tubing without the couplings. The tubing was not plugged as to allow the oil to reach the inner surface of the tubing and then immersed in ASTM No. 3 oil for 70 hours at 134 degrees Fahrenheit. After 70 hours the assembly was allowed to cool at ambient temperature and subjected to a burst strength test. The tubing burst at 1050 psi, which is above the requirement.

The notice drew one of the greatest responses to an inconsequentiality petition that NHTSA has never received. There were 19 comments to the docket. Eight companies and three individuals supported Philatron. The companies were Heavy Duty Marketing, Pac West Intermountain, Inc., Truck Parts East, Sherman-Pearson Company, Jakubik Sales, Inc., Cunningham Seles Company, Raymond Tucker Company, and H&W Marketing. The individuals were P.A. Hames, R.E. Heller, and J.G. Harbeson. The petition was opposed by four companies: Phillips, Parker Hannifin, Imperial Eastman, and Furon. It was also opposed by four individuals: W.A. Hertel, F.C. Destro, D.L. Chimino, and L.R. Phillippi.

The notice requesting comments failed to specify that Philatron had filed its petition following NHTSA compliance tests. Further, the notice did not indicate that, in NHTSA's compliance testing, the failure to comply with the standard was not marginal, as is the usual case where a manufacturer seeks an inconsequentiality determination with respect to a failure of a standard's performance requirement. These facts, however, appear to have been well known to some if not most of the commenters.

Although the fact of failure *per se* caused Messrs. Chimino and Destro to oppose granting the petition, the comments of others raised three principal issues. The first of these is the ability of the hose to resist heat in the absence of oil. This was of concern to the four opposing companies, some of which had run their own heat tests. Parker Hannifin's tests showed that the hoses began to melt at "temperatures below 250 deg. F." Imperial Eastman tested sections of the hoses, pressurizing them to 150 psi, which is approximately the maximum pressure in an ordinary air brake system. The sections were then subjected to various temperatures, beginning at 150 degrees Fahrenheit. The sections withstood one hour at 190 degrees, and five minutes at 200 degrees. Three sections burst at pressures ranging from 240 psi to 520 psi while exposed to 150 degree temperature. Furon and Phillips commented that the hoses would be exposed to high ambient heat in the work environment, from nearby engine components and exhaust stackes.

This aspect of hose performance is addressed by S7.3.2 High temperature resistance of Standard No. 106. The test procedure calls for bending a hose for 70 hours at 212 degrees Fahrenheit over a cylinder; when it is straightened after the test, it "shall not show external or internal cracks, charring, or disintegration visible without magnification." Although the Philatron hose manifested a tangible softening at the end of NHTSA's high temperature test, none of the prohibited conditions had occurred. Regardless of how Parker Hannifin may have conducted its test, the test temperature exceeded by almost 20 percent the temperature specified by Standard No. 106 to demonstrate resistance to high temperature in the absence of oil. Imperial Eastman's pressurization of hose samples is also not one of the test conditions of the high temperature or oil resistance tests of Standard No. 106. The comments of Furon and Phillips are unsupported by data.

There have been no reports that these hoses were damaged or failed due to heat in the work environment. NHTSA representatives telephone the vendors of Philatron hoses that filed comments in support of the petition, and others as well, and verified representations that the hoses had proven satisfactory in use. For these reasons, NHTSA has concluded that tests conducted by Parker Hannifin and Imperial Eastman are not relevant to the real world safety performance of the brake hoses in question.

The second argument raised by the opponents of the petition is the allegation that the Philatron hoses will not pass a combined heat/pressure test. As part of its inconsequentiality petition, Philatron immersed an unplugged sample of hose for 70 hours in oil heated to 134 degrees Fahrenheit. The hose was removed, dried, and burst tested, failing at a pressure of 1,050 psi. When Furon ran the test, it experienced burst pressures between 569 and 613 psi. When Parker Hannifin attempted to run a similar test, the hoses melted before they could be burst tested. NHTSA fails to see the relevance of these tests. A combined heat/pressure test such as Philatron, Furon, and Parker Hannifin have conducted, is not required by Standard No. 106, and the hoses' performance under these tests is unrelated to the issue of whether the noncompliance with S7.3.4 is inconsequential as it relates to safety.

The third issue addressed by the commenters in opposition is the likelihood of the hose in use coming into contact with hot oil. Philatron had asserted that "There is no possibility for the coiled tubing to become saturated with oil at any temperature." Parker Hannifin, Imperial Eastman, Furon, and W.A. Hertel disagreed, commenting that the hoses come into contact with oil in everyday operation. Parker Hannifin elaborated that this contact could occur by way of leaky air compressors, engine leaks, and splashes during refueling. However, according to Philatron and several companies, the hoses are used only as connecting hoses between truck tractors and trailers. Under these circumstances, NHTSA agrees with Philatron's assertion that excessive oil build-up will not occur and that there will be no saturation of the hoses with hot oil.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described in inconsequential as it relates to motor vehicle safety. The petition is granted with respect to the hoses covered by Philatron's Noncompliance Report dated January 7, 1992.

Unlike the subjects of previous inconsequentiality petitions, the reason for the noncompliance here lies in the basic nature of the Philatron hoses instead of in an error of omission or commission that is easily correctable. It appears that the Philatron hoses cannot be manufactured to comply with the oil resistance test because of the nature of the material used in their construction. Accordingly, on January 27, 1992, Philatron filed a petition for rulemaking for an appropriate amendment to Standard No. 106 that would allow it to continue the manufacture of these hoses. This petition was granted on April 10, 1992, and the matter is currently under review.

In the absence of an amendment, Philatron cannot legally manufacture or sell a brake hose of this type, since it has determined that they fail to conform to Standard No. 106. A grant of an inconsequentiality petition relieves a manufacturer only of the obligation under sections 151-154 of the Safety Act (15 U.S.C. 1411-1414) to notify and remedy noncompliances. It is not a license to continue the manufacture and sale of a noncompliant product, which is prohibited by section 108(a)(1)(A) of the Safety Act (15 U.S.C. 1397(a)(1)(A)). Philatron is statutorily prohibited from the manufacture for sale, sale, or the offer for sale of the hoses in question, effective the day the company filed its noncompliance report, January 7, 1992. This prohibition is in effect until such time as Standard No. 106 may be amended in an appropriate manner.

Some of Philatron's competitors have asserted that the petitioner continues to sell noncompliant hoses in violation of section 108(a)(1)(A), and the agency is investigating these allegations.

Further, because of the newness of Philatron's product, and the public concern evidenced by the comments in opposition, NHTSA has decided to incorporate into this notice of grant a formal request pursuant to section 112(b) of the Safety Act (15 U.S.C. 1410(b)) that Philatron report to the agency within 5 days of receipt, any complaint that Philatron may receive about the performance of the hoses, together with a copy of that complaint. Failure to do so would constitute a violation of section 108(a)(1)(B) of the Safety Act (15 U.S.C. 1401(b)), for which a civil penalty may be imposed. This requirement will remain in effect until the conclusion of the rulemaking proceeding that NHTSA has commenced to consider amending Standard No. 106.

Finally, it should be noted that a grant of inconsequentiality does not preclude the agency from conducting a defect investigation, should facts warrant. Should such an investigation indicate the presence of a safety-related defect, the agency could seek notification and remedy of the defect.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: June 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13943 Filed 6-12-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0100.
Form Number: None.
Type of Review: Reinstatement.
Title: Customhouse Brokers.
Description: 19 CFR part III requires various types of information from Customhouse brokers to ensure statutory and regulatory compliance. The information is used for audit and investigations of interstate theft, narcotics smuggling, and prevents persons connected with organized crime syndicates from penetrating the industry.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: Respondents: 2,246. Recordkeepers: 4,682.
Estimated Burden Hours Per Respondent/Recordkeeper:
Response Time....................3 hours, 30 minutes.
Recordkeeping Time............................308 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,448,633 hours.

OMB Number: 1515–0144.
Form Number: CF 301 and CF 5297.
Type of Review: Reinstatement.
Title: Customs Bond Structure.
Description: The CF 301 is used for the revenue and to ensure compliance with law, regulation and instruction. Bonds are authorized and required by law, regulation or instruction and are used as security for various types of Customs transactions.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 590,250.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 147,563 hours.
Clearance Officer: Ralph Meyer (202) 566–9182, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW. Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–13984 Filed 6–12–92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of Public Law 98–164. USIA is requesting approval for a three-year extension of the Update of Information on Exchange Visitor Program Sponsor (IAP–87), under OMB control number 3116–0011, which expires July 31, 1992. Estimated burden hours per response is twenty minutes.

DATES: Comments are due on or before July 15, 1992.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average twenty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Update of Information on Exchange Visitor Program Sponsor.
Form Number: IAP 87.
Abstract: The USIA form IAP–87 is used by the Exchange Visitor Sponsors when they wish to change the name of their institution and/or organization, the names of the personnel involved, address, or telephone numbers. The form is also used to order supply of other forms, code books, or cancel the program.
Proposed Frequency of Responses:
No. of Respondents—1,500.
Recordkeeping Hours—104.
Total Annual Burden—854.

Dated: June 9, 1992.

Rose Royal,

Federal Register Liaison.

[FR Doc. 92–13933 Filed 6–12–92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 115
Monday, June 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 16, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes or previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Budget and Corporate Planning.

Memorandum and resolution re: Statement of Policy Regarding FDIC's Right to Consent to Foreclose and Right of Redemption.

Discussion Agenda

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Extension of the comment period for the proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would increase the deposit insurance assessment to be paid by Bank Insurance Fund members.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 362, entitled "Activities and Investments of Insured State Banks," which would prohibit insured state banks, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank.

Memorandum and resolution re: Proposed amendment to Part 333 of the Corporation's rules and regulations entitled, "Extension of Corporate Powers," which would eliminate current language applying certain prohibitions concerning equity investments by savings associations to state banks that are members of the Savings Association Insurance Fund, with such banks thereafter to be subject to the restrictions of Part 362.

Memorandum and resolution re: Joint advance notice of proposed rulemaking to solicit comment on all aspects of the safety and soundness standards required to be prescribed by the Federal Deposit Insurance Corporation Improvement Act of 1991.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–14123 Filed 6–11–92; 2:33 pm]

BILLING CODE 6714-0-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 16, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552(c)(2), (c)(6) (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal processings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names of locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirement, separations, removals, etc.:

Name of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), and (c)(6)).

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 9, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-14124 Filed 6-11-92; 2:33 pm]

BILLING CODE 6714-O-M

federal register

Monday
June 15, 1992

Part II

National Science Foundation

Request for Public Comment; Solicitation Concept; Notice

NATIONAL SCIENCE FOUNDATION

Request for Public Comment; Solicitation Concept

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: NSF is requesting comments on a proposed solicitation covering two separate projects: a Network Access Point (NAP) Manager and Routing Authority (RA) organization; and a provider of very high speed Backbone Network Services (vBNS). This draft solicitation is being released to the public to solicit comments specifically on the scope of NSF's concept on how the various services can best be provided, including (but not limited to) the methodology and feasibility of providing services as proposed. It is anticipated that a new approach to the provision of NSFNET Backbone Network Services will help provide for the continued development and growth of NSFNET and to continue the transition to a more privatized network.

DATES: After consideration of comments received by August 3, 1992, NSF intends to prepare and release a final program solicitation for the NAP Manager/RA and the vBNS Provider projects.

ADDRESSES: To become part of the official record and to guarantee that issues are addressed through this process, all comments regarding the concepts contained in this draft solicitation must be submitted to NSF in writing (paper, facsimile, or electronic mail) and must be received by 3 p.m. Eastern standard time, Monday, August 3, 1992, at:

National Science Foundation, Division of Networking and Communications Research and Infrastructure, 1800 G Street, NW., room 416, Washington, DC 20550, ATTN: G Strawn (NAP Manager/RA and vBNS Provider Comment). Facsimile: 202-357-0320; Electronic mail: gstrawn@nsf.gov.

FOR FURTHER INFORMATION CONTACT: George Strawn, Program Director, NSFNET Program, 202-357-9717.

SUPPLEMENTARY INFORMATION:

Public draft—Network Access Point Manager/Routing Authority and Very High Speed Backbone Network Services Provider for NSFNET and the NREN Program

Program Solicitation

I. Purpose of this Solicitation

The NSFNET was designed to support the data networking needs of the research and education community. It has become an essential infrastructure for that community used daily to facilitate communication among researchers, educators and students and to provide them with remote access to information and computing resources. The number of users, the number of connected networks, and the amount of network traffic continue to grow rapidly.

NSFNET also supports the goals of the High Performance Computing and Communications (HPCC) Program which was delineated in the President's Fiscal 1992 and 1993 budgets and became law with the passage of The High Performance Computing Act of 1991 (Pub. L. 102-194). One component of the HPCC Program is the National Research and Education Network (NREN) Program which calls for gigabit per second speed networking for research and education by the mid 1990s.

Since the creation of the NSFNET in 1986, the data networking industry itself has evolved considerably. New companies have been created and a number of existing companies have shown increasing interest in data networking. These and other evolutionary changes, together with the pending expiration of the current Cooperative Agreement for NSFNET Backbone Network Services, have prompted the need for new arrangements for NSFNET Backbone Network Services.

To provide for the continued development and growth of NSFNET and to continue the transition to a more privatized network, a new architecture to provide for Backbone Network Services has been formulated and is specified here. The architecture includes two separate projects for which solicitations are required: a Network Access Point (NAP) Manager and Routing Authority (RA) organization; and, a provider of very high speed Backbone Network Services (vBNS). This architecture also includes components such as regional networks and network service providers for which NSF solicitations are not required. (These components are, however, discussed in Section III.D.)

The solicitation invites proposals for a NAP Manager/RA organization to: Arrange for and oversee a specific number of NAPs where the vBNS and other appropriate networks may interconnect; establish and maintain a route server database at each NAP which may be used by the NAP-attached networks to obtain routing information with which to construct routing tables. This component of the backbone network services architecture will: Provide access for other networks to the U.S. Research and Education community; provide for the interconnection for appropriate networks in an environment which is not subject to the NSF Acceptable Use Policy (AUP) which, in essence, limits traffic to that which is in support of research and education; provide routing stability; provide for advances in routing technology; and, provide for the maintenance of a policy routing database.

The solicitation also invites proposals for a vBNS Provider to establish and maintain a vBNS which will be connected to all NAPs and all of whose NSFNET vBNS traffic must be in compliance with the NSF AUP. In the tradition of NSFNET and as discussed below, the vBNS Provider will be expected to demonstrate leadership in the development and deployment of high performance data communications networks. This component of the architecture will: provide for high speed interregional connectivity; enable distributed computing applications; enable multimedia applications such as visualization, collaboration, and distance learning; and, promote the development and deployment of advanced routing technologies.

It is anticipated that the solicitation will result in two separate five-year cooperative agreements between NSF and the organizations and/or consortia chosen as NAP Manager/RA, and vBNS Provider. The two anticipated awards will be made to different organizations (or non-overlapping consortia of organizations). Total NSF funding is expected to be approximately $10,000,000 per year.

This solicitation is issued pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861 et seq.) and the Federal Cooperative Agreement Act (31 U.S.C. 6305) and is not subject to the Federal Acquisition Regulations.

II. Background

The network of networks known as the Internet includes more than 5,000 networks. These networks link together hundreds of thousands of computers and millions of users throughout the world. The domestic portion of the Internet contains a number of NSF-supported networks. These include: Campus network connections at educational institutions; midlevel networks; and NSFNET backbone network services. Broadly speaking, NSFNET consists of all of these networks together with a number of other networks at locations such as government laboratories and private corporations.

The Internet also includes other federally-sponsored networks such as NASA Science Internet (NSI), DOE's

Energy Sciences Network (ESnet), and DARPA's DARTnet and TWBnet. These and other networks and the NSFNET are expected to evolve into a gigabit per second network that allows for both the interconnection and interoperability of federally funded research and education networks with each other and with private sector networks. This multi-agency program is referred to as the NREN.

During the evolution of the NREN Program, account will have to be taken of the requirements of the various network-sponsoring federal agencies. For example, network traffic on NSI and ESnet normally must be in support of the focused missions of NASA and DOE, respectively. NSF, on the other hand, has the broad mission to support science and engineering research and education. As such, NSFNET will carry traffic in support of general research and education requirements.

Because of the breadth of the charter of the NSFNET and because of its wide use by the research and education community, it is projected that the NSFNET user base will continue to grow and that its users will continue to require new levels of network services. The expansion in numbers of users and levels of services make the provision of increasingly high performance Backbone Network Services necessary for the continued success and growth of NSFNET. The new NSFNET Backbone Network Services will also be important in the evolution of the NREN Program.

After consultation with many segments of the Internet community, the National Science Foundation has developed this solicitation for a NAP Manager/RA organization and a vBNS Provider. In the manner specified below, it is anticipated that NSFNET will: Develop increasingly high performance network services; accommodate the anticipated growth in numbers of users and networks and in network traffic; and, transition to a networking infrastructure that is increasingly provisioned by network service providers from the private sector.

III. Network Architecture and Project Requirements

NSF intends to establish a vBNS for NSFNET in the following manner. A number of NAPs will be established where the vBNS and other appropriate networks will be interconnected. (The number and location of the NAPs will be specified in the final solicitation.) A NAP Manager/RA organization will arrange for and oversee the NAPs and will maintain Route Servers with routing and policy databases for networks attached to the NAPs. The NAP Manager/RA will also provide certain routing services for the Internet community. This section gives more details on this approach to providing backbone network services and gives specific requirements for both providers.

A. Network access points. A NAP is defined as a high speed network or switch to which a number of routers can be connected for the purpose of traffic exchange and interoperation. It must have capacity adequate to keep up with the switching requirements of the attached networks. A NAP Manager/RA Organization will be responsible for oversight and coordination of the NAPs. The NAPs will be a conceptual evolution of the Federal Information eXchanges (FIX-East and FIX-West) and the Commercial Information eXchange (CIX). The FIXes are each built around a 100 mbps FDDI ring with attached networks operating at speeds of up to 45 megabits per second (but neither the FIXes nor the CIX currently have dedicated route servers with route databases).

Examples of NAP implementation include (but are not limited to) a LAN (like the FIXes) or a MAN (Metropolitan Area Network) using a service such as Switched Multimegabit Data Service (SMDS). With any implementation, it would be desirable to provide an environment which attempts to equalize and lower the cost of connecting to the NAPs for prospective network services providers. For example, this might be accomplished by locating each NAP "close" to a Point of Presence (POP) of each of the major Inter-eXchange Carriers (IXCs). ("Close" might mean within the same Local Access and Transport Area and, for a LAN implementation, also within a specified number of air miles of the POP of each major IXC.)

The vBNS will operate under the same Acceptable Use Policy (AUP) as the current NSFNET BNS. However, the NAPs will operate in an "AUP-free" mode. This will permit, for example, two attached networks to exchange traffic without violating AUPs of any other attached network.

B. NAP manager/routing authority. Under the current cooperative agreement that provides for backbone network services, the same consortium which provides the BNS also acts as routing authority. Under the new cooperative agreements described here, the routing authority function will be separated from the provision of the BNS. The NAP Manager/RA will provide for equitable treatment of the various network services providers during routing administration and will provide for a common database of route information to promote stability of the network.

By the use of specified external gateway protocols such as BGP and IDRP (Boarder Gateway Protocol and Inter-Domain Routing Protocol), the NAP Manager/RA will create a database of all announced networks and their paths of accessibility. This information will be maintained in route databases which will be deployed at each NAP. Attached networks will be able to utilize this information while creating and modifying their own routing tables.

The NAP Manager/RA organization will also provide certain other services which will facilitate the logical interconnection of the attached networks. In particular, it will assist in the development of new routing technologies and the deployment of simplified routing strategies for attached networks.

The specific anticipated duties of the NAP Manager/RA organization are as follows:

- Establish and maintain, possibly with subcontractors, the specified NAPs for the purpose of connecting the vBNS and other appropriate networks. NAPs are to be AUP-free and can be proposed to be implemented as LANs or MANs or other innovative approaches. NAPs must operate at speeds of at least 100 mbps and must be able to be upgraded as required by demand and usage and by Program goals.
- Develop and establish attachment policies (including attachment fee schedules) which would apply to networks that connect to NAPs.
- Specify reliability and security standards for the NAPs and ensure that these standards are met.
- Specify appropriate access procedures to the NAPs for authorized personnel of connecting networks and ensure that these procedures are carried out.
- Provide appropriate NAP accounting and statistical capabilities.
- Establish and maintain a Route Server database at each NAP by exchanging routing information with and dynamically updating routing information from the attached Autonomous Systems using BPG and IDRP. NAPs must support the switching of IP and CLNP packets (Internet Protocol and ConnectionLess Networking Protocol).
- Work to ensure routing stability.
- Develop advanced routing standards and technologies in cooperation with the global Internet community.

• Provide for simplified routing strategies for attached networks such as default routing.
• Propose and establish procedures to work with the vBNS Provider and personnel from other attached networks to resolve problems and to support end-to-end connectivity and quality of service for network users.
• Promote distributed operation of the Internet.

C. Very high speed backbone network services provider. Since its inception, the NSFNET has been a leader in providing for high speed networking services for the research and education community. The vBNS will continue this tradition and will provide for: high speed interregional connectivity; multimedia traffic in support of visualization, collaboration, and distance learning and, distributed computing capabilities.

The vBNS must be able to switch both IP and CLNP packets and it must operate at speeds of at least 155 megabits per second. The vBNS Provider must participate in the development of advanced routing technologies such as type of service and precedence routing.

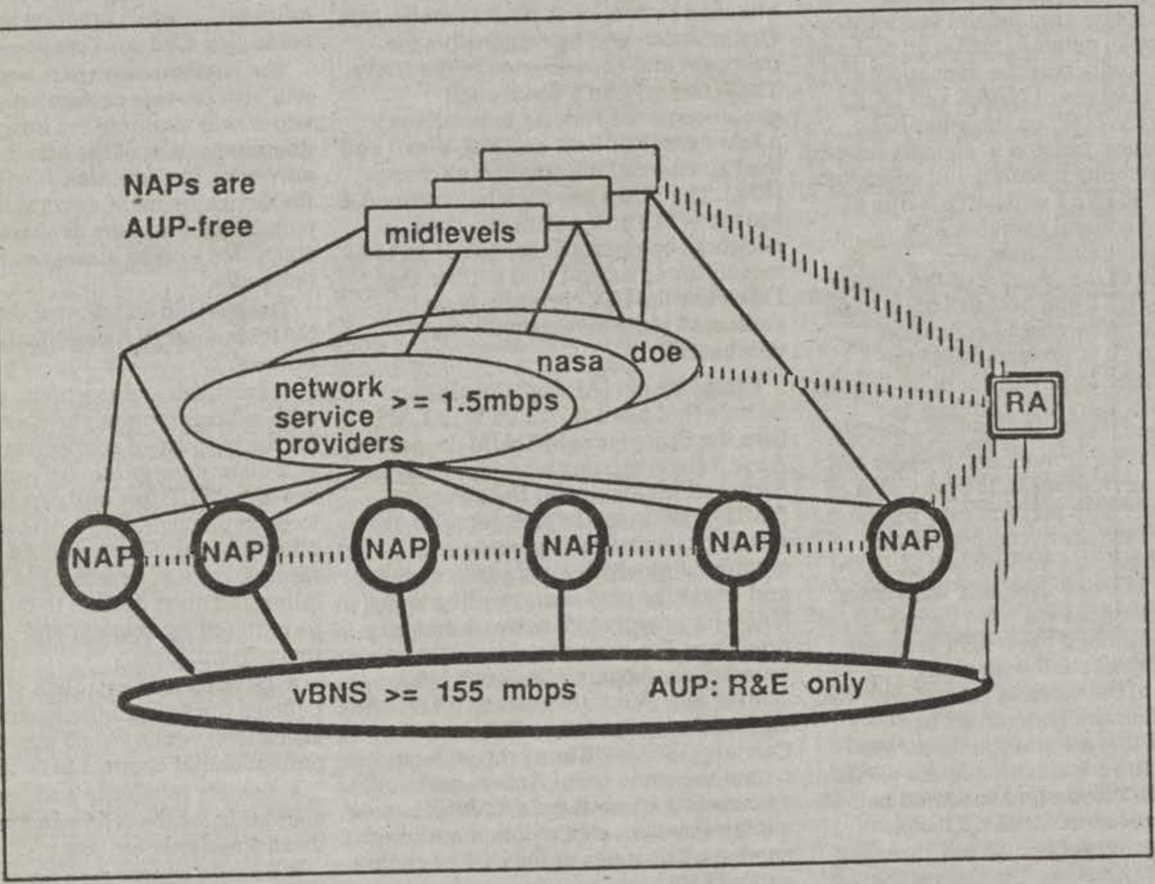

Figure 1. NSF's view of the network architecture

The vBNS may have connections and customers beyond those specified by NSF as long as the quality and quantity of required services for NSF-specified customers are not affected. In this regard, the vBNS Provider must be able to distinguish between NSF customer traffic and that of other customers and to report traffic statistics based on these categories. Figure 1 shows the network architecture from the point of view of NSF.

The specific anticipated duties of the vBNS Provider are as follows:
• Establish and maintain a 155 mbps or higher transit network which switches IP and CLNP packets and which connects to all NAPs in order to provide NSFNET users with a vBNS.
• Propose and establish a set of quality of service metrics which will be used to characterize the proposed network services and to ascertain and publicize network performance on an ongoing basis.
• Subscribe to the policies of the NAP Manager/RA; implement BGP- and IDRP-based procedures to interact with those of that organization to assist in establishing and maintaining the route database.
• Provide for real-time multimedia services, including multicasting and video teleconferencing.
• Propose and establish procedures to work with the NAP Manager/RA and personnel from other attached networks to resolve problems and to support end-to-end connectivity and quality of service for network users.
• Participate in the development of advanced routing technologies (such as type of service or precedence routing) in cooperation with the global Internet community.
• Propose and establish a schedule to enhance both the speed at which the

network operates and other quality of service measures and type of service advances in line with NSF's broad program goals and consistent with anticipated NSF customer requirements and available funding.

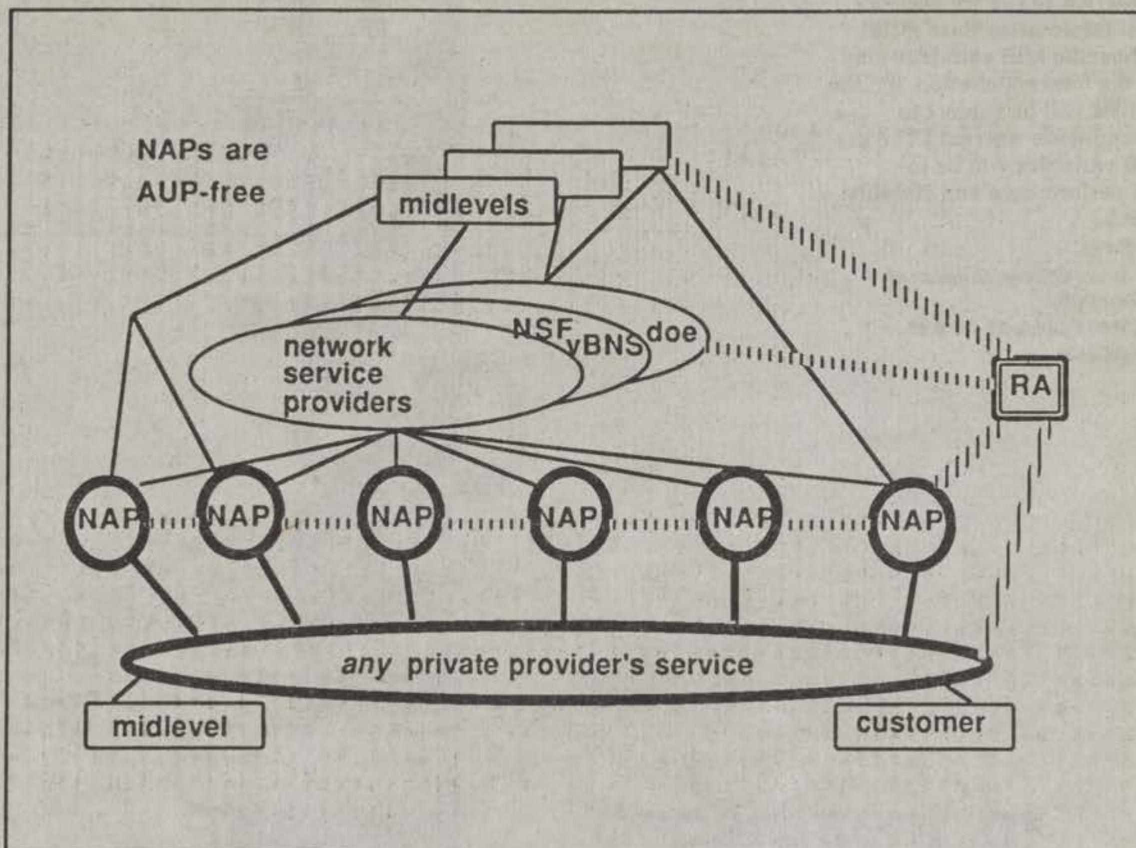

Figure 2. *Any* provider's view of the network architecture

D. Other Architectural and Policy Considerations

It is anticipated that networks other than the vBNS will connect to the NAPs. Examples of such networks include: other federally sponsored networks; other service providers for research and education; service providers for traffic which is not limited to the support of research and education; and international networks.

In each case, attachment of a network to one or more NAPs will require the payment of both an initial and an annual fee (which will depend on parameters such as number of NAP connections and bandwidth of the connections). Fees will be determined by the NAP Manager/RA and NSF so as to recover the expenses associated with the NAPs and with the NAP Manager/RA.

To attach to a NAP, a network must also subscribe to the policies of the NAP Manager/RA and implement BGP- and IDRP-based procedures to interact with those of the NAP Manager/RA to assist in establishing and maintaining the route database. Networks attaching to NAPs must operate at speeds of 1.5 mbps or greater and must be able to switch both IP and CLNP packets. Additionally, attached networks must be able to support video teleconferencing, either by packet video or by circuits multiplexed from their total bandwidth.

As shown in Figure 2, when the network architecture is viewed from the perspective of *any* network service provider, the vBNS is just another service provider. (This may even be the view for the network which underlies the vBNS if that network has customers beyond those specified by NSF.)

NSFNET midlevel networks may connect either to network services providers which are connected to NAPs or directly to NAPs. NSF will support for one year a single such connection fee for midlevel networks which are currently connected to the NSFNET Backbone Network Service. In the following years of the cooperative agreement, NSF support for the connection fee will decrease and the midlevel network will need to increase other sources of support correspondingly. NSF support of this fee will cease after the (first) term of the NAP Manager/RA Cooperative Agreement.

It is anticipated that a number of research institutions will want to take advantage of the advanced capabilities of the vBNS as they access facilities such as the NSF Supercomputing Centers and the NSF Science and Technology Centers, especially for multimedia-based and distributed computing-based applications. Although the subject is not addressed in this solicitation, NSF expects to support such institutional requirements where

feasible based on the scientific merit of proposed applications.

Each network connected to the NAPs may be required to provide access to the NAP Manager/RA to certain network Management Information Base (MIB) variables. (Specific MIB variables may be listed in the final solicitation, but the list of variables will be subject to change as conditions warrant.) The use of these MIB variables will be to promote the performance and stability of the network.

Karen L. Sandberg,

Grant and Contract Officer, Division of Grants and Contracts.

[FR Doc. 92-13836 Filed 6-12-92; 8:45 am]

BILLING CODE 7555-01-M

federal register

Monday
June 15, 1992

Part III

Department of Commerce

International Trade Administration

United States-Canada Free Trade Agreement, Article 1904 Panel Rules Amendments; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Panel Rules Amendments

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Amendments to Rules of Procedure for Article 1904 Binational Panel Reviews.

SUMMARY: The United States and Canada have amended the Rules of Procedure for Article 1904 Binational Panel Reviews. These amendments are intended to improve the panel review process under chapter 19 of the U.S.-Canada Free Trade Agreement in order to increase its efficiency and effectiveness.

EFFECTIVE DATE: These amendments to the Article 1904 Panel Rules shall take effect on the date of publication in the **Federal Register**. The Rules of Procedure, as amended, apply to all panel proceedings commenced on or after the effective date of the amendment. The amended Rules may be referred to for guidance in respect of panel proceedings commenced prior to the effective date except that in no case shall any of the times prescribed for the taking of any action be altered.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, Senior Attorney, or Robert J. Heilferty, Attorney-Adviser, Office of the Chief Counsel for Import Administration (202) 377–5285. For procedural matters respecting cases under panel review, contact James R. Holbein, U.S. Secretary, Binational Secretariat, (202) 377–5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. These panels, acting in place of national courts will, if requested, expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the importing country. Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law No. 100–449, 102 Stat. 1851 (1988) amends U.S. law to implement Chapter 19 of the Agreement.

The Rules of Procedure for Article 1904 Binational Panel Reviews are intended to give effect to the provisions of Chapter 19 of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement. These rules set forth the procedures for requesting, conducting and completing panel reviews.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established the Rules, which were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). All panel reviews are conducted in accordance with the Rules, as amended.

The further amendments to these rules contained in this notice are the result of negotiations between the United States and Canada to implement Article 1904 of the Agreement. A comprehensive review and request for comments on the Article 1904 Binational Panel Rules was announced in the **Federal Register** on December 27, 1989 (54 FR 53166). In addition, all panelists and counsel for every participant in the panel reviews commenced prior to July 1991 received a letter soliciting their suggestions for improving the Article 1904 Panel Rules. These comments, combined with the experiences of the investigating authorities and Binational Secretariats, suggested that improvements could be made which would more efficiently and effectively carry out the provisions of Article 1904 of the Agreement.

A summary description of the amendments to the Article 1904 Panel Rules is contained in the following section-by-section analysis.

Rule 2

The amendment to rule 2 is intended to clarify that where there is a "gap" in the panel rules and a situation is not covered, the panel may look to the rules of procedure of the Court that would otherwise have jurisdiction as well as to the Article 1904 Panel Rules.

Rule 3

The definition of "interested person" was amended to include persons who, while not entitled to commence proceedings, would be entitled to appear and be represented in domestic judicial review. The definition of interested person was previously restricted to those persons entitled to commence judicial review proceedings. This restriction could have been construed to deny standing to parties, particularly those who had appeared before the U.S. International Trade Commission proceedings, that would have standing as defendant-intervenors, but not as plaintiffs, in U.S. courts. To deny standing to such parties would be contrary to Article 1904.7 of the Agreement, which provides that any party that would have standing to appear and be represented in a domestic judicial review shall have the right to appear before a panel. The amended definition of "interested person" is intended to cure only this particular inadvertent oversight.

The definition of "legal holiday" was amended to clarify that the term includes days other than the listed holidays on which the offices of the Government of Canada are officially closed and partial days on which the offices of either the Government of the United States or the Government of Canada are officially closed, *i.e.*, days on which government offices are closed early on account of inclement weather or other reasons.

In light of the changes to the definition of "interested person," which now includes those who "would be entitled to appear and be represented in judicial review", subrule (d) of the definition of "participant" is now covered by subrule (c) and subrule (d) has been deleted.

The Canadian definition of "service list" was amended so that it includes only those persons eligible to participate in the panel review. The previous definition of "service list" required service on all persons who were involved in the administrative proceeding at the Canadian International Trade Tribunal, which could include participants that appeared in respect of goods other than those of the United States.

Rule 10

Rule 10 has been amended and four subrules created. For ease of reading, the first three sentences of former rule 10 have been restructured and now comprise subrules (1) and (2). New subrule (3) provides for removing a document, filed after the announcement of a panel, that is either not provided for in these Rules (such as a surreply) or is not in accordance with the rules (*e.g.*, a late filing). After the panel is formed, and if the panel has delegated the power to the chairperson under rule 17, the responsible Secretary may refer such a document to the chairperson and shall follow the chairperson's instructions to retain the document in the file or to

remove and return it to the submitter. Regardless of the chairperson's instructions, new subrule (4) provides that the participants can appeal the decision to the panel through appropriate motions.

Rule 13

Subrule 13(2) was amended to provide for the delegation of authority from the investigating authority to authorized persons for the issuing of Disclosure Orders (in Canadian panel reviews) or Protective Orders (in U.S. panel reviews) to the Secretary or staff of the Secretariat.

Rule 14

Former subrules 14(1) and 14(2), dealing with Disclosure Undertakings and Protective Order Applications for panelists, assistants to panelists, court reporters and translators, now appear in a new rule 49. Rule 14 now deals exclusively with the duties of the Secretaries. Subrule 14(1) replaces former subrule (3), reflecting the current practice, which is that the responsible Secretary forwards to the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application filed by a panelist, assistant to a panelist, court reporter or translator. The rule was expanded to include amendments or modifications to such persons' protective order applications or disclosure undertakings. Subrule (2) is essentially identical to former subrule (3), except that only one copy of a Disclosure Order or Protective Order need be filed with the responsible Secretariat. Current subrule (3) helps ensure that the responsible Secretary is aware of any changes to the terms under which a panelist, assistant to a panelist, court reporter or translator has access to proprietary information.

Rule 17

Two new subrules have been added to rule 17. Subrule (2) was added to allow the panel to delegate to the chairperson the authority to reject filings in accordance with rule 10 and to grant certain consent motions. This new authority is intended to discourage improper filings and expedite approval of unopposed motions. Because the Agreement requires that all decisions be rendered by the panel, subrule (3) provides that a decision by the chairperson under subrule 17(2) be issued as an order of the panel. Subrule (4) contains the text of former subrule (2).

Rule 20

Rule 20 has been amended by adding three subrules. As a result, the text of former rule 20 is redesignated as subrule 20(1). In an effort to avoid last-minute requests for extension, subrule 20(2) requires that requests for extensions of time for filing be filed no later than ten days prior to the day the filing would otherwise be due. Responses to the motion must be filed within seven days of the extension request. Because rare circumstances may preclude meeting these filing requirements, subrule 20(3) permits a notice of motion for leave to file out of time but requires the participants to give reasons why they need additional time and why they failed to meet the deadline for requesting an extension. Subrule 20(4) provides that the panel will normally rule on the motion before the filing deadline expires.

Rule 23

In order to ensure protection of all information in the panel review process, subrule 23(c) has been amended to ensure that any amendments, modifications or revocations of Disclosure Orders or Protective Orders are served on all counsel for participants.

Rule 24

This rule was amended by adding the term "expedited," to clarify that mail service, as well as delivery courier service, must be expedited.

Rule 25

Like rule 24, this rule was amended by adding the term "expedited," to clarify that mail service, in addition to delivery courier service, must be expedited.

Rule 35

Subrule 35(1)(c)(ii) was amended to clarify that an interested person that has not filed a complaint may support some parts of the determination, but if the interested person intends to support any portion of the determination, that interested person must file a Notice of Appearance in accordance with rule 40. Former subrule (c)(iii) was deleted because the amended definition of "interested person" made it redundant. Former subrule (iv) is redesignated subrule (iii).

Rule 38

Subrule 38(2) was added to address circumstances in which the final determinations of both U.S. investigating authorities are reviewed jointly. In the event that both determinations are remanded to the respective investigating authorities, subrule (2) permits the panel to stay review of the International Trade Commission's remand determination until the Department of Commerce has filed its remand determination. This amendment allows panels to consider the situation in which a redetermination by the Commission is dependent upon the results of Commerce's redetermination. Former subrule (2) is renumbered as subrule (3).

Rule 39

The amendments to subrules 39 (1) and (2), and the addition of subrule (3) derive from the amendment to the definition of "interested person" and concern the standing requirement for persons filing complaints. This requirement is contained in subrule (3), which has been added to clarify that a person's entitlement to file a complaint is based upon whether that person would otherwise be entitled to commence proceedings for judicial review. The amendment to subrule (1) is a parallel change and subrule (2)(c) now requires that the complaint include a statement of the complainant's standing. Schedule C(3) has been modified accordingly. Amended subrule (4) and new subrules (5) and (6) create a procedure for amending complaints. Amended complaints may be filed "as of right" until five days before the deadline for filing Notices of Appearance; after that time, permission to amend complaints must be sought from the panel. The period for filing amended complaints "as of right" ends five days before Notices of Appearance are due in order to give interested parties who are making the decision whether to participate sufficient notice of the terms of the complaint(s). According to subrule 39(5), however, no complaint can be amended when there is less than 20 days left to file briefs. This provision ensures that persons filing briefs have at least 20 days to respond to all issues raised. Finally, subrule 39(6) provides that where a panel does not issue a decision on a motion to amend complaints, the motion is deemed denied.

Rule 40

With respect to filing Notices of Appearance, a number of changes have been made to clarify the filing requirements of the rule. Subrule 40(1)(c) clarifies that an appearance may be made in support of both portions of the final determination and portions of the complaint(s). Subrule (1)(d) requires a statement as to the grounds for a person's entitlement to file a Notice of Appearance, in order to put all parties on notice at an early stage in the

proceedings of any issues regarding the proposed participant's standing. The provisions of subrule (1)(e) repeat those previously found in subrule 40(f). Finally, subrule (2) is a new provision requiring that an interested person that has filed a complaint but that also wishes to support portions of the final determination must file a Notice of Appearance containing a statement to that effect and a statement as to the interested person's entitlement to participate. In addition, a model form has been provided in Schedule C(4).

Rule 41

Rule 41 has been amended to add two new paragraphs. Subrule (3) has been amended to provide that, at the time the Designation of Record is filed, a participant need file proof of service only on the investigating authority. New subrule (4) allows participants to delay by two days service of the record designations on other participants. Under the prior rule, which required service of record designations on all the participants before all participants had been identified, some participants believed that to comply with the rule they had to serve all the parties on the agency's service list. Delay of this service requirement until after the deadline for filing Notices of Appearance ensures that all participants have been identified before the designations must be served. Subrule (5) has been included to clarify that failure to designate an administrative record document does not preclude the filing of that document as an attachment to the brief. This clarification should encourage designation of less than the entire record in a case.

Rule 49

Subrule 49(1) contains language previously contained in subrule 14(1). The requirement that the investigating authority issue a Disclosure Order or a Protective Order was formerly contained in subrule 14(2). Subrule (2) is intended to permit delegations of authority to facilitate issuance of Disclosure Orders. These provisions are more appropriately located in this section of the rules, which deals with the internal functioning of the panel. Rule 49 generally clarifies that panelists, their assistants, court reporters, and translators submit their Disclosure Undertakings or Protective Order Applications to the responsible Secretary, who forwards them to the investigating authority. This is done to avoid contact between the defending participant and persons other than the Secretariat involved either in adjudicating or rendering technical support. In addition, new subrules (3) & (4) ensure that the responsible Secretary is informed of any amendments, modifications, or revocations of a protective order or disclosure order.

Rule 52

Former rule 52 now appears as subrule 52(1) and has been amended to require a person who has been issued a protective order or disclosure order (other than those identified in rule 49) to file with the responsible Secretariat any modifications or amendments thereto made by the investigating authority. In addition, the requirement that four copies of the order be filed with the Secretariat has been reduced to one copy. A new subrule (2) requires that a person whose disclosure order or protective order has been revoked file notice of such revocation with the Secretariat.

Rule 53

This rule is amended to reflect that the investigating authority may modify, as well as amend, a disclosure order or protective order at any time. By specifying modifications, the rule more closely corresponds to the U.S. International Trade Commission's regulations.

Rule 60

A number of changes have been made to this rule. Amended subrule 60(1) states that a participant who files either a complaint under rule 39 or a Notice of Appearance in support of any part of a complaint shall file a brief within 60 days of the last day on which the Administrative Record is filed. This brief is restricted in scope to support of allegations contained in a complaint. The amendments to subrule (2) make clear that participants that support the final determination in whole or in part are to file briefs limited to such positions within 60 days after the complainant briefs are filed. These changes do not change the timing of brief filing but clarify that a participant may file both a brief in support of portions of a complaint and another brief in support of portions of the determination. The amendments to subrule (3) streamline the language previously found in this subrule. To facilitate the panelists' consideration of the briefs, subrule (4) provides for the filing of an appendix containing authorities principally relied upon. The appendix is not, however, to include items from the administrative record. This appendix must be filed within 10 days of the filing of reply briefs under subrule (3). Rule 62A describes the contents of an appendix. Subrules (4)–(6) have been renumbered as subrules (5)–(7).

Rule 61

Subrule 61(3) has been amended to provide that, where no brief is filed in support of the investigating authority by either the investigating authority or an interested party, a panel may, of its own motion, issue its decision.

Rule 62

Rule 62 has been amended to add the requirement that the table of authorities in part I of a brief shall reference the page(s) of the brief where each authority is cited, arrange the cases alphabetically, and mark the authorities principally relied upon with an asterisk. Subrule 62(1) also includes technical changes that conform the references to amendments elsewhere in these rules. Newly added subrule (3) provides that reply briefs also shall include a table of contents and a table of authorities.

Rule 62A

A new rule 62A has been created to give specific guidance regarding the appendix that subrule 60(4) requires. Subrule 62A(1) describes the contents of the appendix to the briefs. Subrule 62A(2) provides that the appendix will be compiled by a participant who filed a brief in support of a complaint as designated by all the participants who have filed briefs. Subrule 62A(3) states that the cost of compiling the appendix will be borne equally by all participants who have filed briefs.

Rule 63

The provision for a statement as to whether other participants consent to a motion, which was contained in subrule 63(3)(d), has been deleted and replaced by subrule 63(5), which provides that any notice of motion consented to by all parties be entitled a consent motion. This change serves several purposes. It helps the responsible Secretary identify consent motions in order to expedite approval of such motions by the chairperson under rules 10 and 17. It also makes clear that if the motion is not a consent motion, the moving participant is not required to expend valuable time attempting to determine every other participants' position with respect to the motion.

Rule 64

This rule is amended by adding a cross-reference to subrule 20(2) to clarify that a response to a notice of motion requesting an extension of time must be filed within 7 days after the notice of motion is filed.

Rule 65

This rule has been amended to change the cross-reference to subrule 66(2), reflecting changes made to rule 66.

Rule 66

Subrule 66(1) has been rephrased to clarify that motions may be disposed of based solely on the pleadings filed in connection with that motion, *i.e.*, without oral argument. Subrule (2) makes explicit that oral argument on a motion may be in person or by means of a telephone conference call. A new subrule (3) authorizes the panel to deny a motion before responses to the pleading are filed.

Rule 70

Subrule 70(1) has been restructured to introduce certain limitations on the circumstances in which a subsequent authority may be brought before the panel.

Rule 72

This rule has been amended to clarify that the publication requirement of the rule applies to decisions of the panel under rule 74 and therefore does not require publication of every procedural order issued by a panel.

Rule 74

This rule has been amended to require that rule 74 decisions be released by noon on the date of issuance. This requirement is meant to relieve the strains placed on both the Secretariats and the participants when decisions are released at or after the close of the business day.

Rule 75

This rule has been amended to include more specific provisions regarding determinations on remand. Generally, the amendments eliminate the step of requesting review on remand. If a participant intends to challenge the remand determination, it does so by simply filing a written submission. Specifically, subrule (2) addresses remands in which the agency has supplemented the record on remand while subrule (3) governs remands in which the record remains unchanged. Under subrule (2)(a), the investigating authority must file an index of the supplementary record items and, subject to rule 46, a copy of each non-privileged document within 5 days after filing the remand determination. The timing of briefs filed to challenge a remand and to respond to the challenge is set from the filing of the supplemental record and index under subrule (2) and from the filing of the remand determination under subrule (3). In both cases, a challenger has 20 days in which to file and participants in support of the remand determination have 20 days in which to reply. Subrule 75(4) states that, where no written submissions are filed challenging the remand determination, and where no rule 20 motion is pending, the panel will affirm the remand determination. Where a remand determination is challenged, subrule (5) requires that a panel issue a written decision within 90 days of the Determination on Remand being filed.

Rule 75A

This new rule has been added to identify some factors which the panel may take into account in setting the date by which a remand determination shall be due. Subrule (a) recognizes that the date on which a remand regarding the same goods is due from the other investigating authority may be relevant. Subrule (b) provides that the panel may also consider the effect the remand determination from the other investigating authority may have on the deliberations of the investigating authority whose determination is under review.

Rule 77

Regarding a notice of motion requesting that a panel re-examine its decision, subrule 77(5) has been added to provide that, where a panel has not ruled on the motion prior to the issuance of a notice of completion pursuant to rule 80, the motion shall be deemed denied.

Rule 80

This rule consolidates the list of events the thirty-first day after which a Notice of Completion of Panel Review will be effective. Those events are: (1) Dismissal for failure to file briefs pursuant to subrule 61(2);

(2) Dismissal by decision of the panel upon a motion pursuant to subrule 73(1);

(3) Dismissal upon a consent motion pursuant to subrule 73(2); and

(4) Affirmance of the agency's decision pursuant to rule 74 (a panel also has an option under rule 74 to remand to the agency but eventually, the panel will affirm the agency's decision under rule 74). This list subsumes provisions previously found in rules 80–84.

Rule 81

This rule has been amended to instruct the responsible Secretary, in the event of a Request for Extraordinary Challenge Review, to publish a Notice of Completion of Panel Review to be effective on the day after the day referred to in rule 59 or subrule 60(a) of the Extraordinary Challenge Committee Rules. The provisions of the original rule have been replaced by subrules 80(a) and (d).

Rule 82

The substance of this rule has been removed to subrule 80(d) and this rule is reserved.

Rule 83

This rule is not necessary because, following a decision to review a remand pursuant to subrule 75(5), the panel will either remand again to the administrative agency, or affirm the agency's decision and issue an order pursuant to rule 74. Therefore, the rule has been removed and reserved.

Rule 84

Amended rule 81 incorporates instructions to the responsible Secretary to publish the Notice of Completion of Panel Review and hence this rule is removed and reserved.

Rule 85

This rule is amended to add that panelists are also discharged from their duties on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to subrule 60(b) of the Extraordinary Challenge Committee Rules.

RULES OF PROCEDURE FOR ARTICLE 1904 BINATIONAL PANEL REVIEWS, U.S.-CANADA FREE TRADE AGREEMENT

Contents

Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between Canada and the United States of America;

Acting pursuant to Article 1904.14 of the Agreement;

Adopt the following rules of Procedure, which shall come into force on the same day as the Agreement comes into force and shall from that day govern all panel reviews conducted pursuant to Article 1904 of the Agreement.

Short Title

1. These rules may be cited as the Article 1904 Panel Rules.

Statement of General Intent

2. These rules are intended to give effect to the provisions of Chapter Nineteen of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement and are designed to result in decisions of panels within 315 days after the commencement of the panel review. The purpose of these rules is to secure the just, speedy and inexpensive review of final determinations in accordance with the objectives and provisions of Article 1904. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules or may refer for guidance to rules of procedure of a court that would otherwise have had jurisdiction in the importing country. These Article 1904 Panel Rules shall not be construed to extend or limit the jurisdiction of the panels.

Interpretation

3. In these rules,

Agreement means the Free Trade Agreement between Canada and the United States of America, signed on January 2, 1988;

Code of Conduct means the code of conduct established by the Parties pursuant to Article 1910 of the Agreement;

Complainant means a Party or interested person that files a Complaint pursuant to rule 39;

Counsel means:

(a) With respect to a panel review of a final determination made in the United States, a person entitled to appear as counsel before a federal court in the United States; and

(b) With respect to a panel review of a final determination made in Canada, a person entitled to appear as counsel before the Federal Court of Canada;

Counsel of record means a counsel referred to in subrule 21(1);

Deputy Minister means the Deputy Minister of National Revenue for Customs and Excise or his successor and includes any person authorized to perform any power, duty or function of the Deputy Minister under the Special Import Measures Act;

Final determination includes, in the case of Canada, a definitive decision within the meaning of subsection 77.1(1) of the Special Import Measures Act;

First Request for Panel Review means:

(a) Where only one Request for Panel Review is filed for review of a final determination, that Request, and

(b) Where more than one Request for Panel Review is filed for review of the same final determination, the Request that is filed first;

Government information means:

(a) With respect to a panel review of a final determination made in Canada, information

(i) The disclosure of which would be injurious to international relations or national defence or security,

(ii) That constitutes a confidence of the Queen's Privy Council for Canada, or

(iii) Contained in government to government correspondence that is transmitted in confidence, and

(b) With respect to a panel review of a final determination made in the United States, information classified in accordance with Executive Order No. 12065 or its successor;

Interested person means a person that, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of the final determination;

Investigating authority means the competent investigating authority that issued the final determination subject to review;

Legal holiday means:

(a) With respect to the United States section of the Secretariat, Saturday, Sunday, New Year's Day (January 1), Martin Luther King's Birthday (third Monday in January), Presidents' Day (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Day (December 25), any day designated as a holiday by the President or the Congress of the United States, and any day on which the offices of the Government of the United States located in the District of Columbia are officially closed in whole or in part; and

(b) With respect to the Canadian section of the Secretariat, Saturday, Sunday, New Year's Day (January 1), Good Friday, Easter Monday, Victoria Day (third Monday in May), Canada Day (July 1), Labour Day (first Monday in September), Thanksgiving Day (second Monday in October), Remembrance Day (November 11), Christmas Day (December 25), Boxing Day (December 26), any other day fixed as a statutory holiday by the Government of Canada or by the province in which the section is located, and any day on which the offices of the Canadian section of the Secretariat are officially closed in whole or in part;

Panel means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

Participant means any of the following that files a Complaint pursuant to rule 39 or a Notice of Appearance pursuant to rule 40:

(a) A Party,

(b) An investigating authority, and

(c) An interested person;

Party means the Government of Canada or the Government of the United States;

Person means:
(a) An individual,
(b) A Party,
(c) An investigating authority,
(d) A government of a province, state or other political subdivision of the country of a Party,
(e) A department, agency or body of a Party or of a government referred to in paragraph (d), or
(f) A partnership, corporation or association;

Pleading means a Request for Panel Review, a Complaint, a Notice of Appearance, a Change of Service Address, a Designation of Record, a Notice of Motion, a Notice of Change of Counsel of Record, a brief and any other written submission filed by a participant;

Privileged information means:
(a) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to solicitor-client privilege under the laws of Canada or constitutes part of the deliberative process with respect to the final determination and with respect to which the privilege has not been waived, and
(b) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;

Proof of service means:
(a) With respect to a panel review of a final determination made in Canada,
(i) An affidavit of service stating by whom the document was served, the day of the week and date on which it was served, where it was served and the manner of service, or
(ii) An acknowledgement of service by counsel for a participant stating by whom the document was served, the day of the week and date on which it was served and the manner of service and, where the acknowledgement is signed by a person other than the counsel, the name of that person followed by a statement that the person is signing as agent for the counsel, and
(b) With respect to a panel review of a final determination made in the United States,
(i) A certificate of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service, or
(ii) An acknowledgement of service by the person served stating by whom the document was served and the date and manner of service;

Proprietary information means:
(a) With respect to a panel review of a final determination made in the United States, business proprietary information under the laws of the United States, and
(b) With respect to a panel review of a final determination made in Canada, information that was accepted by the Deputy Minister or the Tribunal as confidential in the proceedings before the Deputy Minister or the Tribunal and with respect to which the person that designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

Responsible Secretariat means the section of the Secretariat located in the country in which the final determination under review was made;

Responsible Secretary means the Secretary of the responsible Secretariat;

Secretariat means the Secretariat established pursuant to Article 1909 of the Agreement;

Secretary means the Secretary of the United States section or the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

Service address means:
(a) With respect to a Party, the facsimile number, if any, and address filed as the service address of the Party with the Secretariat,
(b) With respect to a person other than a Party, the facsimile number, if any, and address of the counsel of record for the person or, where the person is not represented by counsel, the facsimile number, if any, and address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, or
(c) Where a Change of Service Address has been filed by a Party or the person, the facsimile number, if any, and address set out as the service address in that form;

Service list means, with respect to a panel review,
(a) Where the final determination was made in the United States, the list maintained by the investigating authority of persons that have been served in the proceedings leading to the final determination, and
(b) Where the final determination was made in Canada, the list of persons to whom notice was sent of the final determination made in respect of goods of the United States, or the list of persons that appeared in the proceedings before the Tribunal in respect of goods of the United States;

Tribunal means the Canadian International Trade Tribunal or its successor and includes any person authorized to act on its behalf.

4. The definitions set forth in Article 1911 of the Agreement are hereby incorporated into these rules.

5. Where these rules require notice to be given, it shall be given in writing.

Part I—General

Duration and Scope of Panel Review

6. A panel review commences on the day on which a first Request for Panel Review is filed with the Secretariat and terminates on the day on which a Notice of Completion of Panel Review is effective.

7. Panel review shall be limited to: (a) The allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review; and
(b) Procedural and substantive defenses raised in the panel review.

Responsibilities of the Secretary

8. The normal business hours during which the offices of the Secretariat shall be open to the public shall be 9 a.m. to 5 p.m. each weekday except
(a) In the case of the United States section of the Secretariat, legal holidays of that section; and
(b) In the case of the Canadian section of the Secretariat, legal holidays of that section.

9. The responsible Secretary shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel, including court reporters to record the oral proceedings and, if required, interpreters to provide simultaneous translation.

10. (1) Each Secretary shall maintain a file for each panel review. Subject to subrules (3) and (4), the file shall be comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these rules, in the panel review.

(2) The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

(3) Where, after the announcement of a panel pursuant to rule 44, a document is filed that is not provided for in these rules or that is not in accordance with the rules, the responsible Secretary may refer the unauthorized filing to the chairperson of the Panel for instructions, provided such authority has been

delegated by a Panel to its chairperson pursuant to rule 17. The chairperson may direct the Secretary either to retain the document in the file or to return the document to the person who filed the document.

(4) Where the chairperson directs the Secretary to retain the document in the file, such action shall be without prejudice to a motion to strike such document. Where the chairperson directs the Secretary to return the document, such action shall be without prejudice to a motion for leave to file the document.

11. The responsible Secretary shall forward to the other Secretary a copy of all documents filed in the office of the Secretary in a panel review and all orders and decisions issued by a panel.

12. Where under these rules a responsible Secretary is required to cause a notice or other document to be published in the **Canada Gazette** and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

13. (1) Each Secretary and every member of the staff of the Secretariat shall, before taking up his duties, file

(a) A Disclosure Undertaking, in the form referred to in Schedule A, with the Deputy Minister and the Tribunal; and

(b) A Protective Order Application, in the form referred to in Schedule B, with the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission.

(2) Where a Secretary or a member of the staff of the Secretariat files a Disclosure Undertaking or Protective Order Application in accordance with subrule (1), the appropriate investigating authority, including any person authorized to do so by the appropriate investigating authority, shall issue to the Secretary or the member a Disclosure Order or a Protective Order, as the case may be.

14. (1) The responsible Secretary shall file with the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application, and any amendments or modifications thereto, filed by a panelist, assistant to a panelist, court reporter or translator pursuant to rule 49.

(2) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator, before taking up his duties in a panel review, files with the responsible Secretariat.

(a) In the case of a panelist, a copy of a Disclosure Order or of a Protective Order, signed by the panelist; and

(b) In any other case, a copy of a Disclosure Order or of a Protective Order.

(3) The responsible Secretary shall ensure that every panelist, assistant to a panelist, court reporter and translator files with the responsible Secretariat any amendment to, modification to or revocation of a Disclosure Order or Protective Order issued by the investigating authority.

15. Where a document containing proprietary information or privileged information is filed with the Secretariat in a panel review, each Secretary shall ensure that:

(a) The document is stored in an area dedicated to the storage of documents containing proprietary information or privileged information and the area is identified as such an area;

(b) The wrapper of the document is clearly marked to indicate that it contains proprietary information or privileged information, as the case may be; and

(c) Access to the document is limited to:

(i) In all cases, officials of and counsel for the investigating authority whose final determination is under review,

(ii) In the case of proprietary information, the person who submitted the proprietary information to the investigating authority or counsel for that person,

(iii) In the case of proprietary information, persons who have filed with the responsible Secretariat a Disclosure Order or Protective Order with respect to the document, and

(iv) In the case of privileged information filed in a panel review of a final determination made in the United States, persons with respect to whom the panel has ordered disclosure of the privileged information under rule 55, if the persons have filed with the responsible Secretariat a Protective Order with respect to the document.

16. (1) Each Secretary shall permit access by any person to the information in the file in a panel review that is not proprietary information or privileged information and shall provide copies of that information on request and payment of an appropriate fee.

(2) Each Secretary shall, in accordance with subrule 15(c) and the terms of the applicable Disclosure Order, Protective Order or order of the panel:

(a) Permit access to proprietary information or privileged information in the file of a panel review; and

(b) On payment of an appropriate fee, provide a copy of the information referred to in subrule (a).

(3) No document filed in a panel review shall be removed from the offices of the Secretariat except in the ordinary course of the business of the Secretariat or pursuant to the direction of a panel.

Internal Functioning of Panels

17. (1) A panel may adopt its own internal procedures, not inconsistent with these rules, for routine administrative matters.

(2) A panel may delegate to its chairperson: (a) The authority to accept or reject filings in accordance with rule 10(3); and

(b) The authority to grant motions consented to by all participants, except motions filed pursuant to rule 20 or 55, a motion for remand of a final determination, or a motion that is inconsistent with an order or decision previously made by the panel.

(3) Any decision of the chairperson referred to in subrule (2) shall be issued as an order of the panel.

(4) Subject to subrule 26(b), meetings of a panel may be conducted by means of a telephone conference call.

18. The deliberations of a panel shall take place in private and remain secret and only panelists may take part in the deliberations. Staff of the responsible Secretariat and assistants to panelists may be present by permission of the panel.

Computation of Time

19. (1) In computing any time period fixed in these rules or by an order or decision of a panel, the day from which the time period begins to run shall be excluded and, subject to subrule (2), the last day of the time period shall be included.

(2) Where the last day of a time period computed in accordance with subrule (1) falls on a legal holiday of the responsible Secretariat, that day and any other legal holiday of the responsible Secretariat immediately following that day shall be excluded from the computation.

20. (1) A panel may extend any time period fixed in these rules if:

(a) Adherence to the time period would result in unfairness or prejudice to a participant or the breach of a general legal principle of the country in which the final determination was made;

(b) The time period is extended only to the extent necessary to avoid the unfairness, prejudice or breach;

(c) The decision to extend the time period is concurred in by four out of the five panelists; and

(d) In fixing the extension, the panel takes into account the intent of the rules to secure just, speedy and inexpensive reviews of final determinations.

(2) A participant may request an extension of time by filing a notice of motion not later than the tenth day prior to the last day of the time period. Any response to the notice of motion must be filed not later than seven days after the request for an extension of time.

(3) A participant that fails to request an extension of time pursuant to subrule (2) may file a notice of motion for leave to file out of time accompanied by reasons why additional time is required and why the participant has failed to comply with the provisions of subrule (2).

(4) The panel will normally rule on such a motion before the last day of the time period which is the subject of the motion.

Counsel of Record

21. (1) A counsel who signs any document filed pursuant to these rules on behalf of a participant shall be the counsel of record for the participant from the date of filing until a change is effected in accordance with subrule (2).

(2) A participant may change its counsel of record by filing with the responsible Secretariat a Notice of Change of Counsel of Record signed by the new counsel, together with proof of service on the former counsel and the other participants.

Filing, Service and Communications

22. (1) Subject to subrules 14(3) and 41(7), rule 43, subrule 48(1) and rules 49, 52 and 55, no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) Receipt, date and time stamping, or placement in the file of any document by the responsible Secretariat does not waive any time period fixed for filing and does not mean that the document has been properly filed in accordance with these rules.

23. The responsible Secretary shall be responsible for the service of documents as follows:

(a) Notices of Intent to Commence Judicial Review shall be served on each Party;

(b) Requests for Panel Review, Complaints and Notices of Appearance shall be served on the Parties, the investigating authority and the persons listed on the service list; and

(c) Disclosure Orders and Protective Orders and any amendments, modifications or revocations thereto, decisions and orders of a panel, and Notices of Completion of Panel Review shall be served on the participants.

24. (1) Subject to subrule (4), all documents filed by a participant, other than the administrative record, an item of the administrative record filed pursuant to subrule 41(7) or rule 43 and documents required by rule 23 to be served by the responsible Secretary, shall be served by the participant on the counsel of record of the other participants, or where a participant is not represented by counsel, on the participant.

(2) A proof of service shall appear on, or be affixed to, all documents referred to in subrule (1).

(3) Where a document is served by an expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or is mailed.

(4) A document containing proprietary information or privileged information shall be under seal in accordance with rule 46 and shall be served only on

(a) The investigating authority; and

(b) Participants that have been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or order of the panel, as the case may be.

25. Subject to subrule 26(a), service of a document may be effected in the following manner:

(a) By delivering a copy of the document to the service address of the participant;

(b) By sending a copy of the document to the service address of the participant by facsimile transmission or an expedited delivery courier or expedited mail service, such as express mail in the United States or Priority Post in Canada; or

(c) By personal service on the participant.

26. Where proprietary information or privileged information is disclosed in a panel review to a person pursuant to a Disclosure Order or Protective Order, the person shall not

(a) File, serve or otherwise communicate the proprietary information or privileged information by facsimile transmission; or

(b) Communicate the proprietary information or privileged information by telephone.

27. Service on an investigating authority shall not constitute service on a Party and service on a Party shall not constitute service on an investigating authority.

Pleadings and Simultaneous Translation of Panel Reviews in Canada

28. Rules 29 to 31 apply with respect to a panel review of a final determination made in Canada.

29. Either English or French may be used by any person or panelist in any document or oral proceeding.

30. (1) Subject to subrule (2), any order or decision, including the reasons therefor, issued by a panel shall be made available simultaneously in both English and French where

(a) In the opinion of the panel, the order or decision is in respect of a question of law of general public interest or importance; or

(b) The proceedings leading to the issuance of the order or decision were conducted in whole or in part in both English and French.

(2) Where: (a) An order or decision issued by a panel is not required by subrule (1) to be made available simultaneously in English and French, or

(b) An order or decision is required by subrule (1)(a) to be made available simultaneously in both English and French but the panel is of the opinion that to make the order or decision available simultaneously in both English and French would occasion a delay prejudicial to the public interest or result in injustice or hardship to any participant,

the order or decision, including the reasons therefor, shall be issued in the first instance in either English or French and thereafter at the earliest possible time in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subrule (1) or (2) shall be construed as prohibiting the oral delivery in either English or French of any order or decision or any reasons therefor.

(4) No order or decision is invalid by reason only that it was not made or issued in both English and French.

31. (1) Any oral proceeding conducted in both English and French shall be translated simultaneously.

(2) Where a participant requests simultaneous translation of oral proceedings in a panel review, the request shall be made as early as possible in the panel review and preferably at the time of filing a Complaint or Notice of Appearance.

(3) Where the chairperson of a panel is of the opinion that there is a public interest in the panel review, the chairperson may direct the responsible Secretary to arrange for simultaneous

translation of any of the oral proceedings in the panel review.

Costs

32. Each participant shall bear the costs of and incidental to its own participation in any panel review.

Part II—Commencement of Panel Review

Notice of Intent to Commence Judicial Review

33. (1) Where an interested person intends to commence judicial review of a final determination, the interested person shall

(a) Where the final determination was made in the United States, serve a Notice of Intent to Commence Judicial Review on

(i) Both Secretaries,

(ii) The investigating authority, and

(iii) All persons listed on the service list; and

(b) Where the final determination was made in Canada, serve a Notice of Intent to Commence Judicial Review on both Secretaries and all persons listed on the service list.

(2) Where the final determination referred to in subrule (1) was made in Canada, the Secretary of the Canadian section shall serve a copy of the Notice of Intent to Commence Judicial Review on the investigating authority.

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in Schedule C(1)):

(a) The information set out in subrules 58(1)(c) to (f);

(b) The title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the **Canada Gazette** or the **Federal Register**; and

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the **Canada Gazette** or the **Federal Register**.

Request for Panel Review

34. (1) A Request for Panel Review shall be made in accordance with the requirements of

(a) § 77.11 or § 96.3 of the Special Import Measures Act and regulations made thereunder;

(b) section 516A of the Tariff Act of 1930, as amended, and regulations made thereunder; or

(c) section 408 of the United States-Canada Free Trade Agreement Implementation Act of 1988, as amended, and regulations made thereunder.

(2) a Request for Panel Review shall contain the following information (model form provided in Schedule C(2)):

(a) The information set out in rule 58(1);

(b) The title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the **Canada Gazette** or the **Federal Register**;

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the **Canada Gazette** or the **Federal Register**;

(d) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) The service list, as defined in rule 3.

35. (1) On receipt of a first Request for Panel Review filed within the time period fixed in the Act referred to in paragraph 34(1) (a), (b) or (c) pursuant to which the Request for Panel Review is made, the responsible Secretary shall

(a) Forthwith forward a copy of the Request to the other Secretary;

(b) Forthwith inform the other Secretary of the Secretariat file number; and

(c) Serve a copy of the first Request for Panel Review on the persons listed on the service list together with a statement setting out the date on which the Request was filed and stating that

(i) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review,

(ii) A Party, an investigating authority or other interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review, and

(iii) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

(2) On the filing of a first Request for Panel Review each Secretary shall forthwith cause a notice of that Request to be published in the **Canada Gazette** and the **Federal Register**. The notice shall state that a Request for Panel Review has been received and shall specify the date on which the Request was filed, the final determination for which review is requested and the information set out in subrule (1)(c).

Joint Panel Reviews

36. (1) Subject to subrules (3) and 37(1), where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with respect to particular goods of the United States and a first Request for Panel Review of a final determination made under paragraph 43(1) of that Act with respect to those goods is filed, on the motion of

(a) A participant in the former panel review,

(b) An interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or

(c) The investigating authority in the latter panel review,

the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(2) Subject to subrules (3) and 37(2), where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a first Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, on the motion of

(a) A participant in the former panel review,

(b) An interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or

(c) The investigating authority in the latter panel review,

the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(3) A motion for joint panel review may be filed at any time before, but not later than, 10 days after the first Request for Panel Review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, is filed. Any objection to the motion for joint panel

review must be filed within 10 days thereafter.

37. (1) Where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with respect to particular goods of the United States and a Request for Panel Review of a negative final determination made under paragraph 43(1) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

(2) Where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a Request for Panel Review of a negative final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, the final determinations shall be reviewed jointly by one panel.

38. (1) Subject to subrules (2) and (3), where final determinations are reviewed jointly pursuant to rule 36 or 37, the time periods fixed for the review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, shall apply.

(2) Where final determinations are reviewed jointly pursuant to subrule 36(2), and where the panel remands each final determination to the relevant investigating authority, the Panel may stay review on remand of the final determination under section 705(b) or 735(b) until the Determination on Remand under section 705(a) or 735(a), respectively, is filed with the responsible Secretariat.

(3) Where final determinations are reviewed jointly pursuant to rule 37, the panel shall issue its decision with respect to the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, and where the panel remands the final determination to the investigating authority and the Determination on Remand is affirmative, the panel shall promptly thereafter issue its decision with respect to the final determination made under paragraph 41(1)(a) of the Special Import Measures Act or section 705(a) or 735(a) of the Tariff Act of 1930, as amended.

Complaint

39. (1) Subject to subrule (3), any interested person that intends to make allegations of errors of fact or law, including the jurisdiction of the investigating authority, with respect to the final determination shall file with the responsible Secretariat a Complaint within 30 days after the filing of a first Request for Panel Review of a final determination.

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in Schedule C(3)):

(a) The information set out in rule 58(1);

(b) The precise nature of the Complaint, including the applicable standard of review and the allegations of errors of fact or law, including the jurisdiction of the investigating authority;

(c) A statement describing the interested person's entitlement to file a Complaint under this rule; and

(d) Where the final determination was made in Canada, a statement as to whether the complainant

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

(3) Only an interested person that would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint, whether or not that person has filed a Request for Panel Review and whether or not that person supports any reviewable portion of the final determination.

(4) An amended Complaint may be filed no later than 5 days before the expiration of the time period for filing a Notice of Appearance pursuant to rule 40.

(5) Upon leave of the panel, an amended Complaint may be filed, together with a notice of motion, no later than 20 days before the expiration of the time period for filing briefs pursuant to rule 60(1).

(6) Where the panel does not, within the time period for filing briefs pursuant to rule 60(1), issue its decision on the motion referred to in subrule (b), the motion shall be deemed to be denied.

Notice of Appearance

40. (1) Subject to subrule (2), within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other person that is entitled to and proposes to participate in the panel review and that has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in Schedule C(4)):

(a) The information set out in rule 58(1);

(b) In the case of a Notice of Appearance filed by an investigating authority, admissions, if any, with respect to the allegations set out in the Complaints;

(c) A statement as to whether appearance is made:

(i) In support of the investigating authority;

(ii) In support of the allegations of a Complaint; or

(iii) Party in support of any reviewable portion of the final determination and partly in support of the allegations of a Complaint;

(d) A statement as to the basis for the person's claim of entitlement to file a Notice of Appearance under this rule; and

(e) Where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance:

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

(2) Any complainant that intends to appear partly in support of any reviewable portion of the final determination shall file a Notice of Appearance containing the statements provided in subrules (1)(c)(iii) and (1)(d).

Record for Review

41. (1) The investigating authority whose final determination is under review shall file with the responsible Secretariat, within 5 days after the expiration of the time period fixed for filing a Complaint, an Index comprised of a descriptive list of all items contained in the administrative record with proof of service of the Index on persons listed on the service list.

(2) An Index referred to in subrule (1) shall, where applicable, identify those items that contain proprietary information, privileged information or government information by a statement to that effect.

(3) Within 10 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant shall, and any other participant may, file with the responsible Secretariat, together with proof of service on the investigating authority, a Designation of Record, designating those items in the Index that the complainant or participant considers relevant to the panel review and requests be filed by the investigating authority.

(4) Within 12 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant, and any other participant that files a Designation of Record, shall

serve all other participants other than the investigating authority with a copy of the designation, and file such proof of service with the responsible Secretariat.

(5) Any document included in the Index filed pursuant to subrule (1) but not designated pursuant to subrule (3), may be filed as an attachment to the briefs filed pursuant to subrules 60 (1) or (2), provided the document is relied upon in the brief.

(6) Where a complainant or participant, in a Designation of Record referred to in subrule (3), designates an item identified as containing privileged information, the complainant or participant shall file, together with the Designation of Record, a Notice of Motion for disclosure of the document containing the privileged information in accordance with subrule 55(1).

(7) Within 15 days after the expiration of the time period fixed for filing a Designation of Record, the investigating authority shall file with the responsible Secretariat

(a) Nine copies of the final determination, including reasons for the final determination, if any;

(b) Subject to subrules (8), (9) and (10), two copies of

(i) Any item listed in the Index and designated by the complainants or participants pursuant to subrule (4) and any other item listed in the Index that the investigating authority considers relevant to the panel review, or

(ii) The administrative record; and

(c) The Index marked to identify those items filed by the investigating authority.

(8) Where a document containing proprietary information is filed under subrule (7)(b) or rule 43, it shall be filed under seal in accordance with rule 46.

(9) No privileged information shall be filed with the responsible Secretariat unless it is filed pursuant to an order of a panel made under subrule 55 (3)(b), (7) or (8).

(10) No government information shall be filed with the Secretariat unless the investigating authority, after having reviewed the government information and, where applicable, pursued appropriate administrative review procedures, determines that the information may be disclosed.

42. Reserved.

43. Subject to subrules 41(8), (9) and (10), where a panel directs, on its own motion or pursuant to the motion of a participant, that any part of the administrative record relevant to the panel review be filed with the responsible Secretariat, the investigating authority shall forthwith file two copies of the part with the responsible Secretariat.

Part III—Panels

Announcement of Panel

44. On the completion of the selection of a panel, the responsible Secretary shall notify the participants and the other Secretary of the names of the panelists.

Violation of Code of Conduct

45. Where a participant in a panel review believes that a panelist is in violation of the Code of Conduct, the participant shall forthwith notify a Party in writing of the alleged violation.

Part IV—Proprietary Information and Privileged Information

Filing Under Seal

46. (1) Where, under these rules, a document containing proprietary information or privileged information is required to be filed under seal with the Secretariat or is required to be served under seal, the document shall be filed or served in accordance with this rule and, where the document is a pleading, with rule 59.

(2) A document filed or served under seal shall be

(a) Bound separately from all other documents;

(b) Clearly marked

(i) In the case of a document containing proprietary information, "proprietary" or "confidential", and

(ii) In the case of a document containing privileged information, "privileged"; and

(c) Contained in an opaque inner and an opaque outer wrapper.

(3) An inner wrapper referred to in subrule (2)(c) shall disclose

(a) That proprietary information or privileged information is enclosed, as the case may be; and

(b) The Secretariat file number of the panel review.

47. Filing or service of proprietary information or privileged information with the Secretariat shall not constitute a waiver of the designation of the information as proprietary information or privileged information.

Disclosure Orders and Protective Orders

48. (1) A counsel of record or a professional retained by, or under the control or direction of, a counsel of record who wishes disclosure of proprietary information in a panel review shall file a Disclosure Undertaking, in the form referred to in Schedule A, or a Protective Order Application, in the form referred to in Schedule B, as the case may be, with respect to the proprietary information as follows:

(a) Four copies with the responsible Secretariat; and

(b) One original and six copies with the investigating authority.

(2) A Disclosure Undertaking or Protective Order Application referred to in subrule (1) shall be served

(a) Where the Disclosure Undertaking or Protective Order Application is filed before the expiration of the time period fixed for filing a Notice of Appearance in the panel review, on the persons listed in the service list; or

(b) In any other case, on all participants, in accordance with subrule 24(1).

49. (1) Every panelist, assistant to a panelist, court reporter and translator shall, before taking up his duties in a panel review, submit to the responsible Secretary a Disclosure Undertaking in the form referred to in Schedule A or a Protective Order Application in the form referred to in Schedule B, as the case may be.

(2) Where the responsible Secretary, pursuant to rule 14(1), files a Disclosure Undertaking or a Protective Order Application, as the case may be, on behalf of a panelist, assistant to a panelist, court reporter or translator, the investigating authority, including any person authorized to do so by the appropriate investigating authority, shall issue the Disclosure Order or Protective Order.

(3) Where a panelist, assistant to a panelist, court reporter or translator amends or modifies his Disclosure Undertaking or Protective Order Application, he shall file a copy of that amendment or modification with the responsible Secretariat in order that the Secretary may file the amendment or modification in accordance with rule 14(1).

(4) Where the investigating authority amends, modifies or revokes a Disclosure Order or Protective Order, the person whose Disclosure Order or Protective Order has been amended, modified or revoked shall file a copy of the amendment, modification or notice of revocation with the responsible Secretariat.

50. (1) The investigating authority shall, within 30 days after a Disclosure Undertaking or Protective Order Application is filed with it in accordance with subrule 48(1), serve on the person who filed the Disclosure Undertaking or Protective Order Application

(a) A Disclosure Order or Protective Order as the case may be; or

(b) A notification in writing setting out the reasons why a Disclosure Order or Protective Order is not issued.

(2) Reserved.

51. (1) Where an investigating authority refuses to issue a Disclosure Order or Protective Order to a counsel of record or to a professional retained by, or under the control or direction of, a counsel of record or where the investigating authority issues a Disclosure Order or Protective Order with terms unacceptable to the counsel of record, the counsel of record may file with the responsible Secretariat a Notice of Motion requesting that the panel review the decision of the investigating authority.

(2) Where, after consideration of any response made by the investigating authority referred to in subrule (1), the panel decides that a Disclosure Order or Protective Order should be issued or that the terms of a Disclosure Order or Protective Order should be modified, the panel shall so notify counsel for the investigating authority.

(3) Where the final determination was made in the United States and the investigating authority fails to comply with the notification referred to in subrule (2), the panel may issue such orders as are just in the circumstances, including, without limiting the generality of the foregoing,

(a) An order refusing to permit the investigating authority to make certain arguments in support of its case or striking certain arguments from its pleadings; or

(b) An order resolving issues relating to the non-disclosed information in a manner contrary to the position of the investigating authority.

52. (1) Where a Disclosure Order or Protective Order is issued to a person in a panel review, or is amended or modified pursuant to rule 53, the person shall file a copy of the Disclosure Order or the Protective Order, or of the amendments or modifications, with the responsible Secretariat.

(2) Where a Disclosure Order or a Protective Order is revoked by the investigating authority, the person whose Disclosure Order or Protective Order has been revoked shall file a copy of the Notice of Revocation with the responsible Secretariat.

53. A Disclosure Order or a Protective Order may be amended or modified by the investigating authority at any time in a panel review if the person named in the Disclosure Order or Protective Order signs a declaration acknowledging that his Disclosure Undertaking or Protective Order Application applies with respect to the amendment or modification.

54. Where a Disclosure Order or Protective Order is issued to a person, the person is entitled

(a) To access to the document; and

(b) Where the person is a counsel of record, to a copy of the document containing the proprietary information, on payment of an appropriate fee, and to service of pleadings containing the proprietary information.

Privileged Information

55. (1) A Notice of Motion for disclosure of a document in the administrative record identified as containing privileged information shall set out

(a) The reasons why disclosure of the document is necessary to the case of the participant filing the Notice of Motion; and

(b) A statement of any point of law or legal authority relied on, together with a concise argument in support of disclosure.

(2) Within 10 days after a Notice of Motion referred to in subrule (1) is filed, the investigating authority shall, if it intends to respond, file the following in response:

(a) An affidavit of an official of the investigating authority stating that, since the filing of the Notice of Motion, the official has examined the document and has determined that disclosure of the document would constitute disclosure of privileged information; and

(b) A statement of any point of law or legal authority relied on, together with a concise argument in support of non-disclosure.

(3) After having reviewed the Notice of Motion referred to in subrule (1) and the response referred to in subrule (2), if any, the panel may order

(a) That the document shall not be disclosed; or

(b) That the investigating authority file two copies of the document under seal with the responsible Secretariat in order that two panelists may examine the document.

(4) In a panel review of a final determination made in the United States, before examining a document in accordance with subrule (6) or (8), a panelist shall file with the responsible Secretariat four copies of a Protective Order with respect to the document, signed by him.

(5) The panel shall select the two panelists to make the examination referred to in subrule (3)(b) in such a way that one is a lawyer who is a citizen of Canada and the other a lawyer who is a citizen of the United States.

(6) The two panelists selected under subrule (5) shall

(a) Examine the document *in camera*; and

(b) communicate their decision, if any, to the panel.

(7) The decision referred to in subrule (6)(b) shall be issued as an order of the panel.

(8) Where the two panelists selected under subrule (5) fail to come to a decision, the panel shall

(a) Examine the document *in camera*; and

(b) Issue an order with respect to the disclosure of the document.

(9) Where an order referred to in subrule (7) or (8) is to the effect that the document shall not be disclosed, the responsible Secretary shall return all copies of the document to the investigating authority by serving them under seal on the investigating authority.

56. In a panel review of a final determination made in the United States, where, pursuant to rule 55, disclosure of a document is granted to a person

(a) The panel shall limit disclosure to persons who must have access in order to permit effective representation in the panel review and effective functioning of the panel, and name such persons in the panel order; and

(b) The investigating authority shall issue to that person a Protective Order with respect to that document in accordance with the order of the panel.

Violations of Disclosure Undertakings and Protective Orders

57. Where any person alleges that the terms of a Disclosure Undertaking or Protective Order have been violated, the panel shall refer the allegations to the investigating authority for investigation and, where applicable, the imposition of sanctions in accordance with section 77.26 of the Special Import Measures Act or section 777(d) of the Tariff Act of 1930 as amended.

Part V—Written Proceedings

Form and Content of Pleadings

58. (1) Every pleading filed in a panel review shall contain the following information:

(a) The title of and the Secretariat file number for the panel review, if assigned;

(b) A brief descriptive title of the pleading;

(c) The name of the Party, investigating authority or interested person filing the document;

(d) The name of counsel for the person referred to in paragraph (c);

(e) The service address, as defined in rule 3; and

(f) The telephone number of the counsel referred to in paragraph (d) or, where the interested person is not

represented by counsel, the telephone number of the interested person.

(2) Every pleading filed in a panel review shall be on paper 8½×11 inches (216 millimeters by 279 millimeters) in size. The text of the pleading shall be printed, typewritten or reproduced legibly on one side only with a margin of approximately 1½ inches (40 millimeters) on the left-hand side with double-spacing between each line of text, except for quotations of more than 50 words, which shall be indented and single-spaced. Footnotes, titles, schedules, tables, graphs and columns of figures shall be presented in a readable form. Briefs shall be securely bound along the left-hand margin.

(3) Every pleading filed on behalf of a participant in a panel review shall be signed by counsel for the participant or, where the participant is not represented by counsel, by the participant.

59. (1) Where a participant files a pleading that contains proprietary information, the participant shall file two sets of the pleading in the following manner:

(a) One set of pleadings under seal containing the proprietary information and labelled "Proprietary" or "Confidential" with the top of each page that contains proprietary information marked with the word "Proprietary" or "Confidential" and with the proprietary information enclosed in brackets; and

(b) One set of pleadings labelled "Non-Proprietary" or "Non-Confidential" with each page from which proprietary information has been deleted bearing a legend indicating the location from which the proprietary information was deleted.

(2) Where a participant files a pleading that contains privileged information, the participant shall file two separate sets of the pleading in the following manner:

(a) One set of pleadings under seal containing the privileged information and labelled "Privileged" with the top of each page that contains privileged information marked with the word "Privileged" and with the privileged information enclosed in brackets; and

(b) one set of pleadings labelled "Non-Privileged" with each page from which privileged information has been deleted bearing a legend indicating the location from which the privileged information was deleted.

Filing of Briefs

60. (1) Every participant that has filed a Complaint under rule 39, or a Notice of Appearance with a statement under subrule 40(1)(c)(ii) or (iii), shall file a brief, setting forth grounds and arguments supporting the allegations of a Complaint no later than 60 days after the expiration of the time period fixed for filing the administrative record referred to in subrule 41(7).

(2) Every participant that has filed a Notice of Appearance with a statement under subrule 40(1)(c)(i) or (iii) shall file a brief supporting any reviewable portion of the final determination no later than 60 days after the expiration of the time period for the filing of briefs referred to in subrule (1).

(3) Every participant that has filed a brief pursuant to subrule (1) may file a brief replying to the grounds and arguments set forth in the briefs filed pursuant to subrule (2) no later than 15 days after the expiration of the time period fixed for filing of briefs referred to in subrule (2), and shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrule (2).

(4) An appendix containing authorities cited in briefs filed under subrules (1), (2) and (3) shall be filed with the responsible Secretariat within 10 days of the last day on which a brief under subrule (3) may be filed.

(5) Any number of participants may join in a single brief, and any participant may adopt by reference any part of the brief of another participant.

(6) A participant may file a brief without appearing to present oral argument.

(7) Where a panel review of a final determination made by an investigating authority of the United States with respect to certain goods involves issues that may relate to the final determination of the other investigating authority with respect to those goods, the latter investigating authority may file an *amicus curiae* brief in the panel review in accordance with subrule (2).

Failure to File Briefs

61. (1) Where a participant fails to file a brief within the time period fixed, the panel may order that the participant is not entitled

(a) To present oral argument;

(b) To service of any further pleadings, orders or decisions in the panel review; or

(c) To further notice of the proceedings in the panel review.

(2) Where no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules and where no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of any participant, issue an order to show cause why the panel review should not be dismissed and if good cause is not shown, the panel shall issue an order dismissing the panel review.

(3) Where no brief is filed by an investigating authority or by any interested person in support of the investigating authority within the time period fixed in subrule 60(2), a panel may issue a decision referred to in rule 74.

Content of Briefs and Appendices

62. (1) Every brief filed pursuant to subrule 60(1) or (2) shall contain information in the following order, divided into five parts:

Part I: A table of contents with page references and a table of authorities cited, except references to documents designated from the administrative record. The table of authorities shall reference the page(s) of the brief where each authority is cited, arrange the cases alphabetically, and mark those authorities primarily relied upon with an asterisk in the margin.

Part II: A statement of the case:

(a) In the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the relevant facts;

(b) In the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this Part shall contain a concise statement of the position of the investigating authority or the participant with respect to the statement of facts set out in the briefs referred to in paragraph (a), including a concise statement of other facts relevant to its case; and

(c) In all briefs, references to evidence in the administrative record shall be made by page and, where practicable, by line.

Part III: A statement of the issues:

(a) In the brief of a complainant or of a participant filing a brief pursuant to subrule 60(1), this Part shall contain a concise statement of the issues; and

(b) In the brief of an investigating authority or of a participant filing a brief pursuant to subrule 60(2), this part shall contain a concise statement of the position of the investigating authority or the participant with respect to each issue relevant to its case.

Part IV: Argument:

This part shall consist of the argument setting out concisely the points of law relating to the issues with applicable citations to authorities and the administrative record.

Part V: Relief:

This part shall consist of a concise statement of the precise relief requested.

(2) Paragraphs in parts I to V of a brief may be numbered consecutively.

(3) A reply brief filed pursuant to rule 60(3) shall include a table of contents and a table of authorities indicating those principally relied upon in the argument.

Appendix to the Briefs

62A. (1) Every appendix filed pursuant to subrule 60(4) shall contain the authorities primarily relied upon in the briefs filed according to subrules 60(1), (2) and (3) and marked according to subrule 62(1). The appendix shall include first a list of contents, followed by all treaty and statutory references, references to regulations, cases set out alphabetically, and all other references except to documents designated from the administrative record.

(2) The appendix shall be compiled by a participant who filed a brief under subrule 60(1) who was so designated by all the participants who filed a brief. Each participant who filed a brief under subrule 60(2) shall provide the designated participant with a copy of each authority upon which it primarily relied in its brief that was not primarily relied upon in a brief filed under subrule 60(1); and each participant who filed a brief under subrule 60(3) shall provide the designated participant with a copy of each authority upon which it primarily relied in its brief not primarily relied upon in briefs filed pursuant to subrules 60(1) or (2).

(3) The costs for compiling the appendix shall be borne equally by all participants who file briefs.

Motions

63. (1) A motion shall be made by Notice of Motion in writing (model form provided in Schedule C(5)) unless the circumstances make it unnecessary or impracticable.

(2) Every Notice of Motion and affidavit in support thereof, if any, shall be accompanied by a proposed order of the panel (model form provided in Schedule C(6)), and shall be filed with the responsible Secretariat together with proof of service on all participants.

(3) Every Notice of Motion shall contain the following information:

(a) The title of the panel review, the Secretariat file number for that panel review and a brief descriptive title indicating the purpose of the motion;

(b) A statement of the precise relief requested;

(c) A statement of the grounds to be argued, including a reference to any rule, point of law or legal authority to be relied on, together with a concise argument in support of the motion; and

(d) Where necessary, references to evidence in the administrative record by page and, where practicable, by line.

(4) The pendency of any motion in a panel review shall not alter any time period fixed in these rules or by an order or decision of the panel.

(5) Every Notice of Motion to which all participants consent shall be entitled a Consent Motion.

64. Except as provided in subrule 20(2), unless the panel otherwise orders, a participant may file a response to a Notice of Motion if the response is filed within 10 days after the Notice of Motion is filed.

65. Pursuant to subrule 66(2), at the direction of the chairperson, the responsible Secretary shall fix a date, time and place for the hearing of a motion and shall notify all participants of the same.

66. (1) A panel may dispose of a motion based upon the pleadings filed pertaining to the motion.

(2) The panel may hear oral argument in person or, subject to subrule 26(b), direct that a motion be heard by means of a telephone conference call with the participants.

(3) A panel may deny a motion before responses to the Notice of Motion have been filed.

Part VI—Oral Proceedings

Location

67. Oral proceedings in a panel review shall take place at the office of the responsible Secretariat or at such other location as the responsible Secretary may arrange.

Pre-Hearing Conference

68. (1) A panel may hold a pre-hearing conference and the responsible Secretary shall give notice of the conference to all participants.

(2) A participant may request that the panel hold a pre-hearing conference by filing with the responsible Secretariat a written request setting out the matters that the participant proposes to raise at the conference.

(3) The purpose of a pre-hearing conference shall be to facilitate the expeditious advancement of the panel review by addressing such matters as

(a) The clarification and simplification of the issues;

(b) The procedure to be followed at the hearing of oral argument; and

(c) Any outstanding motions.

(4) Subject to subrule 26(b), a pre-hearing conference may be conducted by means of a telephone conference call.

(5) Following a pre-hearing conference, the panel shall promptly issue an order setting out its rulings with respect to the matters considered at the conference.

Oral Argument

69. (1) A panel shall commence the hearing of oral argument no later than 30 days after the expiration of the time period fixed for filing reply briefs. At the direction of the panel, the responsible Secretary shall notify all participants of the date, time and place for the oral argument.

(2) Oral argument, limited to the issues in dispute and subject to the time constraints set by the panel, shall, unless the panel otherwise orders, be presented in the following order:

(a) The complainants and any participant that filed a brief in support of a complainant or in support of both a complainant and the investigating authority;

(b) The investigating authority and any participant that filed a brief in support of the investigating authority, other than a participant referred to in subrule (a); and

(c) Argument in reply, at the discretion of the panel.

(3) If a participant fails to appear at oral argument, the panel may hear argument on behalf of the other participants that are present. If no participant appears, the panel may decide the case on the basis of briefs.

Subsequent Authorities

70. (1) A participant that has filed a brief may bring to the attention of the panel

(a) At any time before the conclusion of oral argument, an authority that is relevant to the panel review;

(b) With the leave of the panel, an authority that is relevant to the panel review and that came to the attention of counsel after the conclusion of oral argument; and

(c) Before the panel has issued its decision, an authority that was reported subsequent to the conclusion of oral argument,

by filing with the responsible Secretariat a written request setting out the citation of the decision or judgment, the page reference of the brief of the participant to which the decision or judgment relates and a concise statement, no more than one page in length, of the relevance of the decision or judgment.

(2) A request referred to in subrule (1) shall be filed as soon as possible after the issuance of the decision or judgment by the court.

(3) Where a request referred to in subrule (1) is filed with the responsible Secretariat, any other participant may file a concise statement, no more than one page in length, in response within

five days of the day that the request was filed.

Oral Proceedings in Camera

71. During that part of oral proceedings in which proprietary information or privileged information is presented, a panel shall not permit any person other than the following persons to be present:

(a) The person presenting the proprietary information or privileged information;

(b) A person who has been granted access to the proprietary information or privileged information under a Disclosure Order, Protective Order or an order of a panel;

(c) In the case of proprietary information, a person as to whom the confidentiality of the proprietary information has been waived; and

(d) Officials of and counsel for the investigating authority.

Part VII— Decisions and Completions of Panel Reviews

Orders, Decisions and Terminations

72. The responsible Secretary shall cause notice of every decision of a panel issued pursuant to rule 74 to be published in the **Canada Gazette** and the **Federal Register**.

73. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

74. A panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of the panelists, in accordance with Article 1904.8 of the Agreement. The decision will be released by noon on the date of issuance.

Panel Review of Action on Remand

75. (1) An investigating authority shall give notice of the action taken pursuant to a remand of the panel by filing with the responsible Secretariat a Determination on Remand within the time specified by the panel.

(2) If on remand the investigating authority has supplemented the administrative record,

(a) The investigating authority shall file with the responsible Secretariat an Index listing each item in the supplementary remand record, and a copy of each non-privileged item listed in that Index, within five days of the date on which the investigating authority filed the Determination on Remand with the panel;

(b) Any participant that intends to challenge the Determination on Remand shall file a written submission in respect to the Determination on Remand within 20 days of the date on which the investigating authority filed the Index and supplementary record on remand;

(c) Any response to the written submissions referred to in subrule (b) shall be filed by the investigating authority, and any participant supporting the investigating authority, within 20 days after the last day on which written submissions in opposition to the Determination on Remand may be filed.

(3) If, on remand, the investigating authority has not supplemented the record,

(a) Any participant that intends to challenge the Determination on Remand shall file a written submission within 20 days of the date on which the investigating authority filed the Determination on Remand with the panel; and

(b) Any response to the written submissions referred to in subrule (a) shall be filed by the investigating authority, and any participant filing in support of the investigating authority, within 20 days after the last day on which such written submissions may be filed.

(4) If no written submissions are filed under subrule 75(2)(b) or (3)(a) within the time periods established by these rules and if no motion pursuant to rule 20 is pending, the panel shall, within 10 days of the due date for such written submissions or of the denial of a motion pursuant to rule 20, issue an order pursuant to rule 74 affirming the investigating authority's Determination on Remand.

(5) Where a Determination on Remand is challenged, the panel shall issue a written decision pursuant to rule 74, either affirming the Determination on Remand or remanding it to the investigating authority, no later than 90 days after the Determination on Remand is filed.

75A. In setting the date by which a Determination on Remand shall be due from the investigating authority, the panel shall take into account, among other factors,

(a) The date that any Determination on Remand with respect to the same goods is due from the other investigating authority, and

(b) The effect the Determination on Remand from the other investigating authority might have on the deliberations of the investigating authority to make a final Determination on Remand.

Re-examination of Orders and Decisions

76. A clerical error in an order or decision of a panel, or an error in an order or decision of a panel arising from any accidental oversight, inaccuracy or omission may be corrected by the panel at any time during the panel review.

77. (1) A participant may, within 10 days after a panel issues its decision, file a Notice of Motion requesting that the panel re-examine its decision for the purpose of correcting an accidental oversight, inaccuracy or omission and setting out

(a) The oversight, inaccuracy or omission with respect to which the request is made;

(b) The relief requested; and

(c) A statement as to whether other participants consent to the motion, if ascertainable.

(2) The grounds for a motion referred to in subrule (1) shall be limited to one or both of the following grounds:

(a) That the decision does not accord with the reasons therefor; or

(b) That some matter has been accidentally overlooked, stated inaccurately or omitted by the panel.

(3) No Notice of Motion referred to in subrule (1) shall set out any argument already made in the panel review.

(4) There shall be no oral argument in support of a motion referred to in subrule (1).

(5) In the event that a panel has not, prior to issuance of a Notice of Completion pursuant to rule 80, otherwise disposed of a motion referred to in subrule (1), the motion shall be deemed denied.

Delay in Delivery of Decisions

78. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies, panel proceedings and computations of time shall be suspended, pending the appointment of a substitute panelist in accordance with the procedures set out in Annex 1901.2 to Chapter Nineteen of the Agreement.

79. Where a panelist becomes unable to fulfill panel duties, is disqualified or dies after the oral argument, the chairperson may order that the matter be reheard on such terms as are appropriate after selection of a substitute panelist.

Part VIII—Completion of Panel Review

80. If no Request for an Extraordinary Challenge Committee is filed, the responsible Secretary shall cause to be published in the **Canada Gazette** and the **Federal Register** a Notice of Completion of Panel Review, effective on the 31st day following the day on which:

(a) A panel issues an order, pursuant to subrule 61(2), dismissing the panel review;

(b) A panel issues an order, pursuant to subrule 73(1), dismissing the panel review;

(c) A panel is terminated pursuant to subrule 73(2); or

(d) A panel issues a decision, pursuant to rule 74, that affirms the final determination.

81. Except as provided in rule 80, where a Request for an Extraordinary Challenge Committee has been filed, the responsible Secretary shall cause to be published in the **Canada Gazette** and the **Federal Register** a Notice of Completion of Panel Review, effective on the day after the day referred to in either rule 59 or 60(a) of the Extraordinary Challenge Committee Rules.

82. Reserved

83. Reserved

84. Reserved

85. Panelists are discharged from their duties on the day on which a Notice of Completion of Panel Review is effective, or on the day on which an Extraordinary Challenge Committee vacates a panel review pursuant to rule 60(b) of the Extraordinary Challenge Committee Rules.

Schedule A—Disclosure Undertaking Forms

The Disclosure Undertaking forms are available from the Deputy Minister or the Tribunal, as the case may be.

Schedule B—Protective Order Application Forms

The Protective Order Application forms are available from the International Trade Administration of the United States Department of Commerce or the United States International Trade Commission, as the case may be.

Schedule C—Procedural Forms

Forms C (1) through C (6) follow.

Schedule C (1)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Final Determination)

Notice of Intent to Commence Judicial Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, notice is hereby served that:

____

(interested person filing notice)

intends to commence judicial review in the

____

(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *Article 1904 Panel Rules*:

1. ____________________

(The name of the interested person filing this notice)

2. ____________________

(The name of counsel for the interested person, if any)

3. ____________________

____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. ____________________

(The telephone number of counsel for the interested person or the telephone number of the interested person, if not represented by counsel)

5. ____________________

(The title of the final determination for which notice of intent to commence judicial review is served)

6. ____________________

(The investigating authority that issued the final determination)

7. ____________________

(The file number of the investigating authority)

8. (a) ____________________

(The citation and date of publication of the final determination in the **Federal Register** or **Canada Gazette**); or

(b) ____________________

(If the final determination was not published, the date notice of the final determination was received by the other Party)

Date ____________________

____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C(2)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Panel Review)

Secretariat File No.

____

Request for Panel Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *Article 1904 Panel Rules:*

1. ____________________

(The name of the Party or the interested person filing this request for panel review)

2. ____________________

(The name of counsel for the Party or the interested person, if any)

3. ____________________

____

____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. ____________________

(The telephone number of counsel for the Party or the interested person or the telephone number of the interested person, if not represented by counsel)

5. ____________________

(The title of the final determination for which panel review is requested)

6. ____________________

(The investigating authority that issued the final determination)

7. ____________________

(The file number of the investigating authority)

8. (a) ____________________

(The citation and date of publication of the final determination in the **Federal Register** or **Canada Gazette**); or

(b) ____________________

(If the final determination was not published, the date notice of the final determination was received by the other Party)

9. Yes________ No________ Non-Applicable________

(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)

10. The Service List, as defined by Rule 3, is attached.

Date ____________________

____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (3)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Panel Review)

Secretariat File No.

____

Complaint

1. ____________________

(The name of the interested person filing the complaint)

2. ____________

(The name of counsel for the interested person, if any)

3. ____________

____

____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. ____________

(The telephone number of counsel for the interested person or telephone number of the interested person, if not represented by counsel)

5. Statement of the Precise Nature of the Complaint (See Rule 39)
   A. The Applicable Standard of Review
   B. Allegations of Errors of Fact or Law
   C. Jurisdiction of the Investigating Authority
6. Statement of the Interested Person's Entitlement to File a Complaint under Rule 39
7. For Panel Reviews of Determinations Made in Canada:
   (a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one)

____ English ____ French

   (b) Complainant requests simultaneous translation of oral proceedings (Specify one)

____ Yes ____ No

Date ____________

____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (4)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Panel Review)

Secretariat File No.

____

Notice of Appearance

1. ____________

(The name of the investigating authority or the interested person filing this notice of appearance)

2. ____________

(The name of counsel for the investigating authority or the interested person, if any)

3. ____________

____

____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. ____________

(The telephone number of counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. This Notice of Appearance is made:
   ____ in support of the investigating authority;
   ____ in support of the allegations of a Complaint; or
   ____ partly in support of the reviewable portions of the final determination and partly in support of the allegations of a Complaint
6. Statement as to the basis for the interested person's entitlement to file a Notice of Appearance under rule 40
7. For Notices of Appearance Filed by the Investigating Authority
   Statement by the Investigating Authority regarding any admissions with respect to the allegations set out in the Complaints
8. For Panel Reviews of Determinations Made in Canada:
   (a) I intend to use the specified language in pleadings and oral proceedings (Specify one)

____ English ____ French

   (b) I request simultaneous translation of oral proceedings (Specify one)

____ Yes ____ No

Date ____________

____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (5)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Panel Review)

____

Secretariat File No.

____

Notice of Motion

____

(descriptive title indicating the purpose of the motion)

1. ____________

(The name of the investigating authority or the interested person filing this notice of motion)

2. ____________

(The name of counsel for the investigating authority or the interested person, if any)

3. ____________

____

____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. ____________

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the Precise Relief Requested
6. Statement of the grounds to be argued, including references to any rule, point of law, or legal authority relied upon
7. Arguments in support of the motion, including references to evidence in the administrative record by page and line
8. Draft order attached (see Rule 63 and Schedule C (6))

Date ____________

____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (6)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

____

____

(Title of Panel Review)

Secretariat File No.

____

Order

Upon consideration of the motion for (relief requested), filed on behalf of (participant filing motion), and upon all other papers and proceedings herein, it is hereby ORDERED that the motion is

____

Date (Panelist name)

____

Date (Panelist name)

____

Date (Panelist name)

____

Date (Panelist name)

____

Date (Panelist name)

Dated: May 12, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-11567 Filed 6-12-92; 8:45 am]

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federal register

Monday
June 15, 1992

Part IV

Department of Education
Department of the Interior
Department of Justice

Notice to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions

DEPARTMENT OF EDUCATION

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF JUSTICE

Delegating Certain Civil Rights Responsibilities for Educational Institutions

AGENCY: Departments of Education, Interior, and Justice.

ACTION: Notice of agreement between the Department of the Interior and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions.

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401–42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of the Interior designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d to 2000d–4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedure for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of the Interior assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of the Interior.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of the Interior, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) advise the recipient and, where appropriate, the compliant of the results of the postapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the State in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to the Department of the Interior and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be voluntarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of the Interior for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Department of Education and the Department of the Interior fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of the Interior with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of the Interior of the referral.

9. Notify the Department of the Interior and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of the Department of the Interior

The Department of the Interior shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical

assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of the Interior, the types of assistance provided, compliance information solely in the Department of the Interior's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Department of the Interior requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Department of the Interior shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of the Interior against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of the Interior, make the final compliance determination and:

(a) If the Department of the Interior wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education whether the Department of the Interior will either join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When the Department of the Interior initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of the Interior conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. The Department of the Interior may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of the Interior neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within fifteen (15) days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Public Information Coordination

Subject to the Freedom of Information Act, 5 U.S.C. 552, disclosure of information to the public regarding actions implemented under this agreement will be made following consultation between the Department of the Interior and Department of Education representatives.

F. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of the Interior of any such redelegation thirty (30) days prior to its effective date.

G. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement effectuated on April 21, 1967, between the U.S. Department of Health, Education and Welfare and the Department of the Interior (32 FR 6304, April 21, 1967).

H. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective thirty (30) days from publication in the **Federal Register**.

I. Amendment and Termination

This agreement may be modified or amended by written agreement among the signatory parties. This agreement may be terminated by either agency sixty (60) days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: February 25, 1992.

Manuel Lujan, Jr.,

Secretary, Department of the Interior.

Dated: May 1, 1992.

Lamar Alexander,

Secretary, Department of Education.

Dated: June 2, 1992.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 92-13869 Filed 6-12-92; 8:45 am]

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Monday
June 15, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

Indian Applicants Under the HOME Program; Notice of Funding Availability for Fiscal Year 1992

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. -N-92-3443; FR-3206-N-01]

Notice of Funding Availability (NOFA) for Fiscal Year 1992 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1992 for Indian Applicants for the HOME Investment Partnerships Act (the Act) programs, referred to as the HOME program (Pub. L. 101-625).

DATES: Applications must be physically RECEIVED by the Indian Field Office (FO) having jurisdiction over the applicant on or before 3:15 p.m. (FO local time) on August 19, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

SUMMARY: This NOFA announces the availability of funding for Fiscal Year (FY) 1992 for the HOME Program for Indian tribes, provides the selection criteria and information on how to apply and how selections shall be made. All eligible applicants are invited to submit applications for HOME funds in accordance with the requirements of this NOFA.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the appropriate Indian FO. Refer to Appendix 1 of this NOFA for a complete list of Indian FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for HOME funds were reviewed by the Office of Management and Budget for the HOME interim rule and approved under OMB control number 2501-0013.

NOFA Outline

LIST OF APPENDICIES

I. Purpose and Substantive Description

(a) Authority

The Cranston-Gonzalez National Affordable Housing Act (NAHA) was signed into law on November 29, 1990 (Pub. L. 101-625, approved November 28, 1990). Title II (which may be cited as the HOME Investment Partnerships Act) of NAHA creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income Americans. Interim regulations for the HOME Investment Partnerships Program were published as 24 CFR part 92 in the **Federal Register** on December 16, 1991 (56 FR 65312). The requirements of 24 CFR part 92, subpart M (sections 92.600-92.652) of the interim rule (at 56 FR 65372-65374) apply specifically to the Indian HOME program. References in this NOFA to sections and subparts of the rule refer to the interim rule.

(b) Allocation Amounts

(1) In accordance with section 217(a)(2) of NAHA, each Fiscal Year (FY) HUD shall provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds shall be awarded competitively by HUD FOs that have responsibility for the HOME Indian program. For FY 1992 the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, (approved October 28, 1991, Pub. L. 102-139) (92 App. Act), appropriated a total of $1.5 billion for the HOME program. Thus, the amount of funding available for the HOME Indian program in FY 1992 is $15 million.

(2) HOME funds shall be allocated to the HUD FOs responsible for the HOME Indian program on the following basis:

(i) Initial Allocation. Each FO shall be allocated a minimum of $250,000 as a base amount.

(ii) Subsequent Allocation. Funds remaining after the base amount is subtracted shall be allocated to each FO as follows:

(A) By Population. Forty percent of the funds shall be allocated based upon each FO's share of the total eligible Indian population;

(B) By Poverty. Forty percent of the funds shall be allocated based upon each FO's share of the total extent of poverty among the eligible Indian population; and

(C) By Overcrowding. Twenty percent of the funds shall be allocated based upon each FO's share of the total extent of overcrowded housing among the eligible population.

(3) Figure 1 presents the amount of grant authority available for the HOME program for FY 1992 for the various FOs.

FIGURE 1.—FY 1992 GRANT AUTHORITY FOR INDIAN HOME

Indian region	Amount	Percentage
Chicago	$1,097,754	7.32
Oklahoma City	2,500,190	16.67
Denver	2,424,553	16.16
Phoenix	6,668,615	44.46
Seattle	810,665	5.40
Anchorage	1,498,203	9.99
Total	$15,000,000	100.00

(4) Project Grant Amount. There is no maximum grant amount per project.

(5) FO Directors shall select applications for funding for Indian housing on the basis of the criteria stated in this NOFA. FO Directors may fund at a level less than applied for. Projects with the highest score shall be funded in rank order until the FO allocation is exhausted.

(6) For the purposes of this NOFA, only FOs will ensure that all environmental reviews are performed in accordance with 24 CFR 50 after the grant award but prior to any commitment or release of project funds (except for approved Administrative Funds), and that any adverse environmental impacts will be resolved by mitigation, site change or project re-configuration.

(7) After the initial funding round, funds that have not been awarded shall be distributed to the FOs that still have unfunded projects that qualify for funding.

(8) If the Department does not award the entire $15 million in this funding round because there is not a sufficient number of eligible applications, the amount not awarded shall be awarded at another time.

(c) Eligibility

(1) Eligible Applicants. For the purposes of the HOME program, eligible applicants are defined as any Indian Tribe, band, group, or Nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

(2) Projects and Activities.

(i) Applications for one or more projects shall be considered under this NOFA. 24 CFR 92.2: "*Project* means a site or entire building (including a manufactured housing unit), or two or more buildings together with the site or sites on which the building or buildings is located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under this part. Project includes all of the activities associated with the site and building. If there is more than one site associated with a project, the sites must be within a four block area." However, "block" has no meaning for the Indian HOME program and should not be used in determining the extent of the project. 24 CFR 92.604: "There are four categories of projects that may be funded under the HOME Indian program: Housing rehabilitation (moderate and substantial), acquisition of housing, new housing construction, and tenant-based rental assistance." (1) a rehabilitation project consists of only rehabilitation, or includes acquisition of units with rehabilitation, (2) an acquisition project consists of the acquisition of standard units not requiring rehabilitation, (3) a new construction project consists of new construction of housing and may include acquisition and demolition, and (4) a tenant-based rental assistance project consists of tenant-based rental assistance, not tied to specific housing units. Project types (1), (2), and (3) may also include site improvements and relocation. An application may contain any number of projects. Each project must be presented separately and shall be rated and ranked separately. The project may be for rental or homeownership. If one project is needed for the success of a second, the second shall not be funded without the first.

(ii) Eligible activities are described at 24 CFR 92.611 as follows:

"(1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance; and to pay administrative costs. The specific eligible costs for these activities are set forth in § 92.612.

"(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

"(3) Housing that has received an initial certificate of occupancy or equivalent document within a one-year period before an Indian tribe commits HOME funds to the project is new construction for purposes of this part.

"(4) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding a unit beyond the existing walls, in which case, the project is new construction for purposes of this part."

(d) Suggestions for the Applicant

(1) An application must provide a brief narrative summary description of its proposed project that tells HUD what the applicant wants to do with program funds. The applicant must include this brief narrative summary description. While there are no points for this project description requirement, it is a necessary threshold requirement. For an application to be considered for ranking, rating and funding, it must include a brief description of the project or projects proposed for funding.

(2) In addition to providing a brief summary project description, an application must tell HUD how each project meets the selection criteria. This NOFA presents the selection criteria in section I.(e), below. The selection criteria are taken from the regulation for the HOME program that was published as an interim rule in the Federal Register on December 16, 1991 (pp. 65312–65385). In this NOFA, HUD has divided up each major selection criterion according to the way it was described in the regulation, and then further subdivided those criteria to make it easier for applicants to identify and respond to each element of the criteria. The Department has described what the reviewer of the application will be looking for and just how many points that information is worth. For each project, the applicant must tell HUD how its project meets each element of the criteria listed in this NOFA. While there are no points for this requirement, it is also a threshold requirement.

(3) HUD suggests that each applicant score its own project, even though there is no requirement to do so. This will help to show how a project might be scored by the reviewers. It will also help to show if the application meets the thresholds and the minimum point score requirement (60 points), and where the strengths and weaknesses in a project are located. Then, the applicant can strengthen the weaker parts of a project and use the stronger parts as a model for other projects. Copies of the scoring sheets that will be used by HUD to evaluate a project are available from the FO.

(e) Selection Criteria/Ranking Factors

Each project submitted for grant funding shall be evaluated using the three criteria provided in 24 CFR 92.604, as more fully explained is sections I.(e)(1)(2), and (3) of this NOFA, below. See Figure 2. The complete rating and ranking process is described in detail at section I.(e)(4). Remember, the HOME program is for low-income and very low-income persons.

FIGURE 2.—INDIAN HOME PROGRAM SCORING

Selection criteria	Maximum points
Need and Design	40
Planning and Implementation	35
Leveraging	25

(1) Need and Design—40 points maximum. The first of the three criteria provided in 24 CFR 92.604 is: The degree to which the proposed project addresses the housing needs of the tribe as identified in the application and through other information available to HUD in the application, and the degree to which the proposed project is feasible while maximizing benefits to very low and low-income families.

This first criterion is divided into two parts that will be examined and evaluated separately:

(i) Need—20 points maximum. The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the documentation for the project and through other information available to HUD. Tribal need must be documented. This documentation should include current IHA waiting lists, data on the degree of overcrowding, percentage of population in need of housing based upon census data, etc. This discussion of need is a threshold requirement. To be considered further, the documentation of housing need for the project must receive a total of at least 6 points for items (A), (B), and (C) of this factor, as follows:

(A) Housing Need Expressed in Terms of Quantity (4 points maximum). The tribe shall express its housing needs within its reservation, service area, or area of operation by: quantity (number of housing units needed to meet the housing need), and unit size (number of bedrooms). The tribe shall submit documentation supporting this housing need. Documentation that contains a formal survey prepared by a tribe, a State, the Federal government or a commission authorized by a tribe, a State, or the Federal government, or a formal survey authorized by a tribe, State, the Federal Government or a tribe-authorized commission and actually performed by a third party, such as a consultant or university, shall receive four points. Documentation supporting housing need other than a formal survey shall receive points ranging from 0 to 3 depending upon the quality of the documentation presented. See Table 1.

TABLE 1.—SCORING GUIDE

[Quantity of Housing Need; Quality of Documentation]

Good	Fair	Unsatisfactory
3 or 4 points	1 or 2 points	0 points.

(B) Demographic Information Regarding Indian Households in Need of Housing (3 points maximum). Demographic characteristics of Indian households that are in need of the housing identified in (A), immediately above, shall quantify the number of Indian households and number of family members in the household, their age, and gender, as well as the number of households for which an accessible unit is needed. Documentation for a project that contains this data shall receive 3 points. An updated IHA waiting list may be used to supply this data. Documentation for a project that contains partial supporting documentation shall receive 1 or 2 points depending on the quality of the documentation. If the documentation is unclear or missing entirely it will receive 0 points. See Table 2.

TABLE 2.—SCORING GUIDE

[Quantity of Housing Need; Demographic Characteristics]

Complete or with IHA list	Partial documentation	Unclear or missing
3 points	1 or 2 points	0 points.

(C) Responsiveness of Proposed Project Design to Identified Need (3 points maximum). Documentation for a project must illustrate the degree to which the identified housing need shall be met. Documentation for a project that precisely responds to the housing need will receive 3 points. Documentation for a project that does not illustrate the degree to which the identified housing need shall be met, or that fails to meet the housing need will receive 2 to 0 points depending upon its responsiveness to this factor. See Table 3.

TABLE 3.—SCORING GUIDE

[Responsiveness of Proposed Project Design to Housing Need]

Very responsive	Fairly responsive	Not responsive
3 points	1 or 2 points	0 points.

(D) Benefits to Very Low and Low-Income Members of the Tribe (10 points maximum). Under this factor, the most points are given to the tribe that has the highest ratio of very low and low-income members to total members. The documentation for any of the four categories of project will be scored in relation to the number of very low and low-income members of the tribe compared to the number of non-very low and low-income members of the tribe. This is quantified as the ratio of very low and low-income members of the tribe to non-very low and low-income members of the tribe times 10, but not to exceed 10. See Table 4.

TABLE 4.—SCORING GUIDE

[Benefits to Very Low and Low Income Members]

10×(low income/non-low income)—But not to exceed 10 points.—

(ii) Project feasibility—20 points maximum. Project feasibility as measured here is the degree to which the number and size of the proposed housing units matches the need for low income housing identified in the previous evaluation factor. Is there a match between the size of the proposed units and the size of units needed by the low income families to be housed? Is there a match between the number of proposed units and the number of families to be housed?

Documentation for a project must demonstrate that the proposed project is feasible for its community in terms of the degree to which it maximizes benefits to very low and low-income members of the tribe; demonstrate that the proposed project shall provide a sufficient number of units of the appropriate size for the need that was identified, and that the units are suitable for occupancy (or shall be made suitable); and, that the units are in compliance with building code requirements (or shall be brought into compliance). Modular and manufactured homes are eligible forms of housing.

(A) Identification of Appropriate Kind and Amount of Units for the Proposed Project (5 points maximum). The documentation for a project will receive 5 points if it properly identifies the quantity of housing units to be made available for very low and low-income members of the tribe and illustrates that the size of the units available meets the need of the very low and low-income members. The documentation for a project shall receive less than 5 points if it does not precisely identify the quantity of housing units to be provided and their availability for very low and low-income members of the Indian tribe, and does not clearly illustrate that the size of the units shall meet the needs of the very low and low-income members, depending on the quality of information presented. See Table 5.

TABLE 5.—SCORING GUIDE

[Identification of Quantity of Housing Units To Be Made Available to Low Income Members of the Tribe]

Good	Fair	Unsatisfactory
4 or 5 points	1 to 3 points	0 points.

(B) Maximizing Benefits—Reusing HOME dollars in subsequent projects (15 points maximum). HOME funds repaid or returned may be reinvested in additional projects. The applicant should view the HOME funds as seed money and look at the degree to which the seed money is used to create more

units than the HOME funds might have created directly. The applicant must submit a plan for reinvesting the HOME funds. This plan for reinvestment of HOME funds in subsequent HOME activities over 5 years has a maximum value of 15 points.

The degree to which HOME funds are reinvested will be evaluated based upon the additional number of dollars (for assisted housing) made available over 5 years by the reinvestment divided by the number of dollars for assisted housing in the grant made under this program.

When one dollar or more is made available by reinvestment for each dollar initially made available by the HOME grant, the maximum number of points (15) is earned. When one-half dollar is made available by reinvestment for each dollar initially made available by the HOME grant, one-half the maximum number of points to the next whole point (8) is earned. Points shall be awarded as presented in Table 6.

TABLE 6.—SCORING GUIDE

[Maximizing Benefits by Reinvestment]

	Ratio (Percentage)	Points	Score
1	200 or more	15	
2	150 to 199	12	
3	111 to 149	10	
4	100 to 110	8	
5	50 to 99	6	
6	1 to 49	4	
7	Less than 1, or unclear	0	

(2) Planning and Implementation—35 points maximum. The second of the three criteria provided in 24 CFR 92.604 is: The degree to which the financial, legal, and administrative actions necessary to undertake the proposed project have been considered and addressed in the documentation for the project, and the degree to which the applicant has the administrative staff to successfully carry out the project.

This section must be concrete and specific about the financial, administrative, and legal actions necessary to carry out the project, and it must address administrative capability—existing or planned. The applicant must demonstrate that the proposed project is feasible and meets the regulatory affordability requirements. This evaluation is to include complete cost estimates for the project and the cost reasonableness of the project.

(i) Financial—15 points maximum.

(A) Property identification and comparison of project cost and ability of needy family to pay (6 points maximum). The applicant must demonstrate that the proposed very low and low-income Indian owners or tenants shall be able to afford to buy or rent this housing in accordance with the affordability requirements under 24 CFR 92.613: "Tenant-based rental assistance," 24 CFR 92.615: "Qualification as affordable housing and income targeting: Rental housing," and 24 CFR 92.614: "Qualification as affordable housing: Homeownership." This evaluation is to include the results of market surveys for acquisition, rehabilitation, or new construction of housing and/or the identification of the actual properties to be acquired, rehabilitated, or constructed. In addition, for tenant-based rental assistance, the applicant must explain how much money the low income family is going to need in order to pay its share of the rent, and where the families will use the tenant-based rental assistance (i.e., where available rental units are located). For tenant-based rental assistance, the HOME assistance shall be less than or equal to 100% of the fair market rent (FMR). See Table 7.

TABLE 7.—SCORING GUIDE

[Cost vs. Ability To Pay]

Good	Fair	Unsatisfactory
5 or 6 points	1 to 4 points	0 points.

(B) Project cash flow projection (3 points maximum). This requirement deals with the year by year cash flow for the proposed project. For example, for a new construction project by the applicant of a single family detached unit and where that unit is to be sold to a low income family that will occupy the unit, the cash flow projection would show the cost of construction; the construction payments; any equity or debt using HOME or non-HOME funds; the sale of the unit to the family, identifying any downpayment and any mortgage loan; and the monthly mortgage payment and the source of funds to make those payments.

The applicant must provide a year-by-year cash flow projection that includes a proforma estimate of all project costs and revenues. The project must be financially feasible from the start. The costs and the revenues must be realistic. The units must be buildable for the amounts shown. The costs must not be unrealistically low, showing more product for less money. See Table 8.

TABLE 8.—SCORING GUIDE

[Project Cash Flow Projection]

Good	Fair	Unsatisfactory
3 points	1 or 2 points	0 points.

(C) Long-term financial feasibility (3 points maximum). This requirement deals with the financial feasibility of the proposed project. The project is viewed as having costs and revenues throughout its lifetime. The applicant is asked to identify all of the costs and revenues, year by year, and report them to ensure that all of the costs shall be paid by revenues reasonably anticipated to occur.

The project must be financially feasible for the long-term, while at the same time remaining affordable as prescribed by the requirements at 24 CFR 92.614 and 92.615. Arrangements to be made for long-term costs must be shown. See Table 9.

TABLE 9.—SCORING GUIDE

[Long Term Financial Feasibility]

Good	Fair	Unsatisfactory
3 points	1 or 2 points	0 points.

(D) Cost effectiveness test (3 points maximum). This factor gives more points to projects that use less HOME funds.

(1) Housing Rehabilitation. For proposed projects that consist of rehabilitation, the proposed expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the total development cost (TDC)) for substantial rehabilitation and no more than 50% of the cost of new construction for moderate rehabilitation. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(2) Acquisition. For acquisition, for the proposed project, the proposed expenditure of HOME funds shall be no more than 62.5% of the cost of new construction (i.e., no more than 62.5% of the TDC) if it has been substantially rehabilitated and no more than 50% of new construction if it has been moderately rehabilitated. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(3) New Construction. For new construction, for the proposed project, the proposed expenditure of HOME funds shall be less than or equal to 100% of the TDC. If the HOME assistance is less than 20% of the maximum allowable, the project receives 3 points. For 20% to 60%, 2 points. For 61% to 99%, 1 point. If it is 100% of the maximum allowable, the project receives 0 points. See Table 10.

(4) Tenant-Based Rental Assistance. This factor measures amounts of HOME funds based on the estimated income of the tenants, so that HOME assistance is 100% of the FMR if the tenant's contribution is zero. When the HOME assistance is at 100% of FMR, the project shall receive no points. When the HOME assistance is greater than 60% of the FMR but less than 100%, the project will receive 1 point. When the HOME assistance is greater than 19% but less than 61% of the FMR, the project will receive 2 points. When the HOME assistance is less than 20% of FMR, the project will reeive 3 points. See Table 10.

TABLE 10.—SCORING GUIDE—COST EFFECTIVENESS TEST

[In Percentages]

0 to 19	20 to 60	61 to 99	100
3 points	2 points	1 points	0 points.

(ii) Legal and Administrative Actions—5 points maximum.

(A) Building codes or standards. See 24 CFR 92.621. The documentation for building codes or standards for the project is a threshold item and shall identify proper building codes or standards that the Tribal government shall enforce or promulgate when the grant is awarded.

(B) Other legal and administrative. 5 points maximum. All policies, procedures, standards, criteria, and planning documents necessary for the type of project proposed must be included in the documentation for the project. Where rental housing is envisioned, this includes the tenant selection requirements for rental housing at 24 CFR 92.622(e) and 92.613(a) for tenant-based rental assistance. Where assistance for first time homebuyers is contemplated, this includes the requirements to 24 CFR 92.615. In addition, if the applicant is assisting first time homebuyers, it must establish guidelines determined by HUD to be appropriate for the subsequent resale of the housing units, required under 24 CFR 92.615(a)(4). Points are to awarded based on inclusion of sample documents, as well as the quality of the documents. See Table 12. Reviewers will determine points based on the extent to which the applications include documentation on the following factors:

(1) Housing Rehabilitation. Data submitted should include adopted rehabilitation policies, including adopted rehabilitation standards that meet applicable local codes and/or ordinances; maximum rehabilitation cost per unit; rehabilitation selection criteria; and project planning documents.

(2) Acquisition. Data submitted should include adopted standards for houses that will be acquired, including maximum purchase price per unit; participant selection criteria, and project planning documents.

(3) New Construction. Data submitted should include adopted standards for construction that meet applicable or local codes and ordinances and that meet HUD prescribed energy-efficiency standards; maximum cost per unit; participant selection criteria; and project planning documents.

(4) Tenant-Based Rental Assistance. Data submitted should include adopted lease form and maximum rent standards; housing quality standards; use of IHA waiting list; tenant selection criteria; and project planning documents.

TABLE 12.—SCORING GUIDE—OTHER LEGAL AND ADMINISTRATIVE

Good	Fair	Unsatisfactory
4 or 5 points	1 thru 3 points.	0 points.

(iii) Administrative Staffing—15 points maximum.

(A) Staffing plan during implementation and operation (15 points maximum). The applicant must provide a staffing plan and timetable for implementation of the project, to include the following:

(1) The staffing plan should identify key personnel who will be employed during the implementation phase of the project, i.e., during acquisition, rehabilitation, new construction, etc., and their experience relative to the proposed project. In order to be properly rated, the experience identified must demonstrate the degree of competence key personnel have in relation to the tasks required in implementing the proposed project. A proposal having highly experienced/competent personnel will receive 11 to 15 points. Proposed staff will be rated in varying degrees of competency in accordance with table 12 below.

(2) If the tribe has an agreement for the tribal IHA (or any other entity) to implement the project, a copy of the agreement should be included, as well as a staffing plan of the IHA (or other implementing entity), which includes the addition of staff for this project, and a description of the impact on the entity due to administering this project.

(3) All proposed projects that will be operated as rental projects MUST include a management and maintenance plan and a staffing plan for these functions. An agreement with the tribal IHA to manage the units is not sufficient as a management and maintenance staffing plan; the IHA should include projected staffing to carry out these functions. See Table 12.

TABLE 12.—SCORING GUIDE—STAFFING PLAN DURING IMPLEMENTATION—PLAN AND TIMETABLE

Good	Fair	Unsatisfactory
11 thru 15 points.	6 thru 10 points.	0 thru 5 points.

(3) Leveraging—25 points maximum.

The third of the three criteria provided in 24 CFR 92.604 is: Leveraging of HOME funds. This means HOME funds attracting or bringing in other dollars. Leveraging is the degree to which other sources of assistance, including, but not limited to: loans, advances, equity invpstments, interest subsidies, State funds, private contributions, and in-kind contributions are used in conjunction with HOME funds to carry out the proposed project.

Funds from all sources shall be documented by a written commitment and may be contingent on approval of the HOME award. Resources shall be counted only if they are currently available or shall be available within 3 months of grant notification. The degree to which other sources of assistance are used shall be evaluated, and points shall be awarded based upón the additional number of dollars for assisted housing made available by the other sources of assistance divided by the number of dollars for assisted housing in the grant under this program.

(i) When two (or more) dollars are made available by other sources of assistance for each dollar made available by HOME funds, the maximum number of points (25) is earned. When one dollar is made available by other sources of assistance for each dollar made available by

HOME funds, ten (10) points is earned. Points shall be awarded as presented in Table 13.

TABLE 13.—*Scoring Guide*

[Leveraging]

	Ratio (Percentage)	*Points*	Score
1	200 or more	25	
2	150 to 199	20	
3	111 to 149	15	
4	100 to 110	10	
5	50 to 99	8	
6	10 to 49	5	
7	Less than 10, or unclear.	0	

(ii) Ratio as a percentage is computed by dividing the number of dollars made available by other resources of assistance by the number of dollars made available by HOME funds, and multiplying by 100.

(iii) Applicants must provide documentation of the amount and sources of additional funds, including mortgage insurance, tribal funds, private contributions, tribal in-kind contributions directly related to the activity (labor, material, and equipment, as well as for soft costs, e.g., architectural and engineering costs, administrative costs), etc., which are to be used in conjunction with HOME funds to carry out the proposed project.

(iv) In-kind contributions must be documented. Land already owned by the tribe shall not be counted. In the case of land donated by individuals or entities, it shall be counted if the donation was contingent upon the receipt of the award. All funds, services, and land to be contributed must be documented. Land value shall be counted as a contribution only to the extent of its appraised value. All appraisals shall be in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Donated services shall be accepted, provided: (1) The costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and (2) comparable costs and time estimates are submitted that support the donation.

(v) The amounts recognized as leverage may not include any other Federal grant or assistance program. Loans secured through mortgage loan insurance programs (e.g., section 248 mortgage loan insurance) are not considered Federal assistance for this purpose.

(4) Rating and Ranking Factors. Rating and ranking of projects will be carried out separately by each FO for those applicants in its area. Each FO will create an Initial Project Ranking list.

For an overall picture of project rating, see Figure 2.—Indian HOME Program Scoring. Note the threshold requirements.

Figure 2.—Indian Home Program Scoring

1. Threshold reqm't: tribal housing plan.	Yes [ ]	No [ ]
2. Threshold reqm't: project narrative description.	Yes [ ]	No [ ]
3. Threshold reqm't: how project meets selection criteria.	Yes [ ]	No [ ]
4. Threshold reqm't: need and design (a) housing need (10 points max., 8 req'd).	Yes [ ]	No [ ]
5. Threshold reqm't: proposed compliance with building codes.	Yes [ ]	No [ ]
6. Threshold reqm't: operation mgmt, maintenance, & staffing plan.	Yes [ ]	No [ ]

Selection criteria	Maximum points
1. Need	40 total (maximum)
a. Need and design	[20 subtotal]
(1) Need-quantity	(4)
(2) Demographic info.	(3)
(3) Design to need response	(3)
Threshold requirement = 8 points minimum Yes [ ] No [ ].	
(4) Low income benefit	(10)
b. Project feasibility	[20 subtotal]
(1) Kind and amount of units.	(5)
(2) Maximize benefits thru reinvestment.	(15)
2. Planning and Implementation.	35 total
a. Financial	[15 subtotal]
(1) Cost and ability to pay	(6)
(2) Cash flow	(3)
(3) Long-term feasibility	(3)
(4) Cost effectiveness	(3)
b. Legal and administrative	[5 subtotal]
1. Threshold requirement: building codes or standards.	Yes [ ] No [ ]
(2) Other legal and administrative.	(5)
c. Administrative	[15 subtotal]
(1) Implementation staffing plan.	(15)
Threshold requirement: operation mgmt. maint. & staffing plan.	Pass [ ] Fail [ ]
3. Leveraging	25 total
Project Score	100 points maximum

The reviewer should use as a guide Figure 3.—Rating Form for Indian HOME Grant Applications, below, to roll-up the scores for each of the selection criteria.

Figure 3.—Rating Form for Indian HOME Grant Applications

Applicant ______

Reviewer ______

Date ______

Threshold factor	Yes	No
1. Submission of Tribal Housing Plan.		
2. Submission of project narrative description.		
3. Submission of how project meets selection criteria.		
4. Need and design (a) Housing need (10 points max., 8 req'd).		
5. Proposed compliance with building codes.		
6. Operation mgmt. maint. & staffing plan.		
Pass all thresholds		

Point Scores for each factor	Max pts.	Application score
1. Need and design		
Total	40 max.	
a. Housing need		
Subtotal	20	
Table 1—Scoring Guide—Quantity of Housing Need—Quality of Documentation.	(4)	
Table 2—Scoring Guide—Quantity of Housing Need—Demographic Characteristics.	(3)	
Table 3—Scoring Guide—Responsiveness of Proposed Project Design to Housing Need.	(3)	
Table 4—Scoring Guide—Benefits to Low Income Members.	(10)	

Point Scores for each factor	Max pts.	Application score
b. Project feasibility Subtotal	(20)	
Table 5—Scoring Guide—Identification of Quantity of Housing Units Available to Low Income Members of the Tribe.	(5)	
Table 6—Scoring Guide—Maximizing Benefits by Reinvestment.	(15)	
2. Planning and Implementation Total	40	
a. Financial Subtotal (15)		
Table 7—Scoring Guide—Cost vs. Ability to Pay.	(6)	
Table 8—Scoring Guide—Project Cash Flow Projection.	(3)	
Table 9—Scoring Guide—Long Term Financial Feasibility.	(3)	
Table 10—Scoring Guide—Cost Effectiveness Test.	(3)	
b. Legal and Administrative Subtotal (5)		
Table 11—Scoring Guide—Other Legal and Administrative.	(5)	
c. Administrative Subtotal (15)		
Table 12—Scoring Guide—Staffing Plan During Implementation—Plan and Timetable.	(15)	
3. Leveraging Total	20	
Table 13—Scoring Guide—Leveraging. Subtotal (20)		
Project Score: ______(max. 100)		

(i) Merged Ranking. After the projects from all applicants have been rated, their scores will be assembled in a single, merged list of scores for all rated projects.

(ii) An applicant should indicate a project priority if applications for more than one project are submitted. Otherwise, applications for more than one project submitted by an applicant shall be ranked in the order of the score received.

(iii) Computation. Scores for ranking shall be carried out to two decimal places (e.g., 12.34).

(iv) Selection. The ranking process shall produce an ordered list of projects that may receive funding. The order is established by the number of points the project received in the rating process. The threshold for further consideration shall be 60 out of 100 points. Project applications scoring lower than 60 points shall be set aside as non-responsive and ineligible. Of the qualifying applications, the project with the highest point total shall be funded first, the next highest shall be funded second, and so on, continuing through all the projects that have met the threshold requirement or until the funds are exhausted.

(v) Tie Breaker. When rating results in a tie among projects, FOs shall approve projects in the following order:

(A) Those that can be fully funded over those that cannot be fully funded.

(B) Projects that benefit the most very low and low-income persons.

(C) Projects that beneift the highest percentage of the total population of the tribe.

II. Application Process

(a) Application Packages. An application kit, including Application Form 424 may be obtained from any Indian FO listed in Appendix 1.

(b) Submittal of Complete Application. Completed applications must be submitted to the Indian FO having jurisdiction for the applicant at the address/location listed at Appendix 1. The applicant shall be submitted on Form 424 and shall be accompanied by all the legal and administrative attachments required by the form.

(c) Application Due Date. An applicant may submit an application for a project at any time after the PUBLICATION DATE of this NOFA, to the Indian FO having jurisdiction over the applicant on or before 3:15 p.m. FO local time, August 19, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Facsimile ("FAX") copies shall not be accepted.

III. Checklist of Application Submission Requirements

Each application must contain the following:

(a) ______ Threshold requirement: Tribal Housing Plan. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS) to receive HOME funds. However, the application must demonstrate how the proposed project shall contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe. The application must include a Tribal Housing Plan (THP), consisting of a comprehensive description of the housing needs of the tribe, steps for meeting that need year-by-year for five years, and a procedure for ensuring continuity from year-to-year as well as a process to accommodate change when needed. This THP is a threshold requirement. To be considered further, the application for the project must contain this information. In future years, the tribe shall be expected to submit the previous year's information as part of the new year's application and demonstrate how it is implementing its THP. The applicant shall be required to explain year-to-year deviations from the THP. The Tribal Housing Plan shall, at a minimum, consist of the following:

(1) Housing needs. A description of the tribe's estimated housing needs projected for the ensuing 5-year period, and the need for assistance for very low-income and low-income families, specifying such needs for different types of tenure and for various family sizes.

(2) Strategy for the homeless. A description of the nature and extent of homelessness within the tribal jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, and a description of the tribe's strategy for:

(i) Helping very low and low-income families avoid becoming homeless;

(ii) Addressing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and

(iii) Helping homeless Indians make the transition to permanent housing and independent living.

(3) Housing market characteristics. A description of the significant characteristics of the tribe's housing market, including a description of the

physical condition of the housing units with such elements of infrastructure as proposed housing cluster sites, existing and proposed off-site roads, existing and proposed water and sewer facilities, utilities, parks, and landscaping. Indian housing units should be described separately. In addition, the plan should address geographical and topographical features, as well as socio-economic factors such as employment opportunities, schools and services which have an impact on the placement of residential housing.

(4) Coordination of the THP and policies. An explanation as to whether the cost of housing or the incentives to develop, maintain, or improve affordable housing within the tribe's jurisdiction are affected by tribal policies, including land use controls, zoning ordinances, building codes, fees and charges, and growth limits, and a description of the tribe's strategy to remove or ameliorate negative effects, if any.

(5) Institutional structure. An explanation of the actual and anticipated institutional structure, including private industry, nonprofit organizations, and public institutions, through which the tribe will have to carry out its THP.

(6) Availability of resources. An indication of the resources from private, non-Federal public, and Federal sources that are reasonably expected to be made available for housing and related activities, and an identification of where tribal land may be used.

(7) Strategy. A description of the tribe's strategy for housing activities and families to be assisted over a five year period.

(b) ______ Components that address the summary description and selection criteria thresholds. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria of sections I.(e)(1), (2), and (3) of this NOFA. This includes, but is not limited to, a description of the proposed project, building codes or standards, how the HOME funds shall be used, and the various kinds of information that are necessary in order to apply the selection criteria/rating factors.

(c) ______ Complete application on Standard Form 424, Application for Federal Assistance.

(d) ______ HUD Form 4122, Project Summary for CPD Small City Indian Program, and HUD Form 4125, Implementation Schedule.

(e) ______ Description of proposed project.

(f) ______ HUD Form 4123, Cost Summary.

(g) ______ Project cost information.

(h) ______ Project location map.

(i) ______ HUD Form 2880, Applicant Disclosures.

(j) The following certifications:

(1) ______ A certification that the applicant shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

(2) ______ A certification that the applicant shall use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

(3) ______ Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(4) ______ Debarment. The certification that neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

IV. Corrections to Deficient Applications

Upon receipt of the application, HUD shall note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. The FO will complete review of the application within 14 days after the application due date. If the applicant proposes to involve the IHA, the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory or the involvement of a disqualified IHA, the Department shall notify the applicant in writing that the applicant has additional time to submit the missing item or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

V. Other Matters

(a) Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) Energy. Utility expenses place a heavy burden on Indian housing and often cause abandonment. Applicants are encouraged to address this problem in applications for funding. 24 CFR 92.621: "Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39." See also 24 CFR 905.250(b) and 24 CFR 85.36(b)(7).

(c) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA shall not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The NOFA is limited to providing funds to Indian tribes in accordance with a program to expand the supply of affordable housing.

(d) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA provides funds to Indian tribes in accordance with a program to expand the supply of affordable housing. To the extent that housing for families is increased, the impact on the family is beneficial. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(e) Section 102 of the HUD Reform Act. Documentation and Public Access Requirements; Applicant/Recipient disclosures:

Documentation and public access requirements. HUD shall ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, shall be made available for public inspection for a five-year period beginning not less than 30 days after the

award of the assistance. Material shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD shall include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD shall make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) shall be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—shall be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 of the HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advanced information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics shall provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter should be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) Section 112 of the HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Dated: June 8, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Appendix 1. List of Indian Field Offices

Region V—Chicago

Chicago Office of Indian Program, 77 West Jackson Boulevard, Chicago, Illinois 60606–3507, (312) 353–1282 or (800) 735–3239

Region VI—Oklahoma

Oklahoma City Indian Programs Division, Murrah Federal Building, 200 NW. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4101

Region VIII—Denver

Denver Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–2963

Region IX—Phoenix

Indian Programs Office, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2360, (603) 379–4156

Region X—Seattle

Seattle Office of Indian Programs, 1321 Second Avenue, Seattle, Washington, 98101–2054, (206) 442–5298

Region X—Anchorage

Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513–7537, (907) 271–4170

[FR Doc. 92–13907 Filed 6–12–92; 8:45 am]

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June 15, 1992

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for Fiscal Year 1992; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3444; FR 3142-N-01]

NOFA for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs for Fiscal Year 1992

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for the Indian Housing Development and Indian Housing Family Self-Sufficiency Programs, Fiscal Year 1992.

DATE: Applications must be physically RECEIVED by the Indian field office (FO) having jurisdiction over the applicant by 3:15 p.m. (FO local time) on July 30, 1992 for the Family Self-Sufficiency Program, and by 3:15 p.m. (FO local time) on August 10, 1992 for the Indian Housing Development Program. Application(s) for the FSS Program and for new Indian housing units must be submitted on Form HUD-52730 with all supporting documentation required by the appendices to this NOFA, i.e., Appendix 2, Appendix 3, and Appendix 4, and for demolition or disposition in accordance with NOTICE PIH 91-17, "Fiscal Year 1992 Public and Indian Housing Demolition or Disposition Application Submission;" and 24 CFR part 905, subpart M.

The above-stated application deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the stated deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

SUMMARY: This NOFA announces the availability of Indian housing (IH) development funds for Fiscal Year (FY) 1992 to support Family Self-Sufficiency (FSS) programs of IHAs. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of Indian housing with both public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

A. This NOFA also announces the availability of funding for FY 1992 for the development of new IH units and provides the applicable criteria, processing requirements and action timetable. All Indian Housing Authorities (IHAs) that have not been determined to be administratively incapable, in accordance with 24 CFR 905.135, are invited to submit applications for Indian housing developments in accordance with the requirements of this NOFA.

b. In the body of this document is information concerning: the purpose of this NOFA; eligibility; available amounts; the procedures that an IHA must follow to apply for an Incentive Award of Indian housing development units and new Indian housing units. The procedures for rating, ranking, and funding IHA applications are also in this NOFA.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Indian FO for further information. Refer to Appendix 1 for a complete list of FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of Management and Budget and assigned OMB control number 2577-0030.

Table of Contents

List of Appendices

I. Family Self-Sufficiency

A. Authority

The Family Self Sufficiency Program (FSS) is authorized under section 23, U.S. Housing Act of 1937, as added by section 554, of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990).

B. Incentive Award Allocation Amount

1. The FY 1992 HUD Appropriations Act (Pub. L. 102-39) made available $227,170,000 of budget authority for Indian housing development. However, this amount was reduced by $10,418,428 due to a budget adjustment necessitated by a slower rate of Section 202/8 conversions than originally anticipated. Therefore, the amount of funds available for Indian housing development in FY 1992 is $216,751,572.

Approximately ten percent ($22,000,000) of the $216,751,572 provided for new IH developments in FY 1992 is being set aside for FSS purposes, in accordance with section 23 of the U.S. Housing Act of 1937 (as amended by section 554 of the National Affordable Housing Act of 1990 (NAHA) (42 U.S.C. 14237u)). Those funds will be made available for competition in accordance with this NOFA. (FSS Indian housing development Incentive Award grant funds are exempt from the metropolitan/non-metropolitan requirement, see sec. III.B.)

2. To carry out the Incentive Award competition, the total amount of FSS funds is being made available for the FSS program and will be allocated to the six Indian FOs on the basis of fair-share factors which reflect the most recent Bureau of Indian Affairs (BIA) Consolidated Housing Inventory; and, where available, State or Tribal studies. The approximate share to be provided to each Indian FO is shown below:

Indian region	Estimated number of units	Amount
Chicago	45	$2,929,000
Oklahoma City	54	$2,985,000
Denver	44	3,864,000
Phoenix	81	6,405,000
Seattle	21	1,676,000
Anchorage	35	4,141,000
Total	280	$22,000,000

3. FO Directors will select applications for funding for Indian housing on the basis of the criteria stated in this NOFA. FO Directors may fund at a level less than applied for. To satisfy this procedure, the FO will find the percentage which enables its funding to be distributed to all

applicants above the threshold such that the percentage of units applied for which are funded is the same for all applicants. Otherwise, applications with the highest score will be funded in rank order until the FO allocation is exhausted.

Any unused funding in a specific region will be redistributed by Headquarters, proportional to need, among remaining allocation areas with approvable partially funded FSS applications. Unused FSS funding will be redistributed by Headquarters on the same fair-share basis to the Indian FOs after all approvable FSS applications have received funding consideration.

4. Regional offices may not authorize any selection criteria in addition to the criteria set out in this NOFA.

C. Eligibility for Incentive Award Units

1. IHA Eligibility

All IHAs are eligible to apply for Incentive Award units, except that applicants for Indian housing development units must be organized in accordance with 24 CFR 905.125 or 905.126; must have executed the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended; and must maintain administrative capability in accordance with 24 CFR 905.135.

2. Eligibility for Multiple FSS Incentive Programs Under This NOFA

Applications may be made to more than one FSS incentive program; e.g., an IHA may apply for Incentive Section 8 rental certificates or rental vouchers *and* Incentive Indian housing units, as long as the IHA is eligible to participate in the programs for which it applies.

a. Applications for the FSS Incentive Awards under this NOFA do not preclude applications for funds under other NOFAs for Section 8 rental certificates and rental vouchers.

b. No Indian Housing Incentive Award application shall be for more than 50 units, and no IHA may file an application for more than one Incentive Award from Indian housing.

c. Ineligible Programs. Indian Mutual Help Housing is not eligible for FSS Incentive Award funding.

D. Incentive Award Application Process

1. Application Process

IHAs applying for Incentive Award units must submit the following to the appropriate FO in accordance with the FSS TIME TABLE.

FSS Time Table

a. Applications due from IHAs on or before 3:15 p.m., FO local time, July 830, 1992.

b. FOs to initiate immediate screening. One working day after the application is received, FO staff will initiate screening for completeness.

c. FOs begin application review and rating within 14 calendar days after the application deadline.

d. Award announcement September 19, 1992.

2. Application Forms

An application Form HUD–52730 for the number of Incentive Award units applied for. Applications must meet the general requirements for new Indian housing units. An Application Packet, including copies of the forms required, will be available in FOs listed in appendix 1.

3. Submittal of Complete Application

For a discussion of what constitutes a complete application, see III.A. Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in appendix 1.

4. Required Exhibits

All applicants must submit a narrative demonstration that the IHA will be able to implement an FSS program within 12 months of application approval.

5. Incentive Award Application Screening

Immediately after the deadline for receipt of Incentive Award applications, the FO will screen applications to determine whether all information or exhibits were submitted. Appendix 2, appendix 3, and appendix 4 of this NOFA provide submission requirements and initial threshold screening checklists.

6. Action on Application

When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, must demonstrate legal sufficiency, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory or the involvement of a disqualified IHA, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

7. Application Rating, Ranking and Selection

a. Rating of Applications. Approvable applications shall be rated, ranked and funded by the FOs.

b. Processing of Incentive Award Projects. After funding, Incentive Award projects shall be processed in accordance with outstanding program procedures and shall be subject to all time frames set forth in program procedures.

c. Submission of Action Plan. The Action Plan must be submitted to the FO within 90 calendar days of notification of approval by HUD of the IHA's application.

E. Selection Criteria and Ranking Factors

1. Incentive Award—FSS Selection Criteria and Rating and Ranking Factors

a. Selection Criteria. To be selected for an incentive award, an IHA must meet the basic requirements for funding for new Indian housing units (see appendix 4 of this NOFA) and provide evidence that is satisfactory to HUD that it has:

(1) A broad base of support for an FSS program in its community;

(2) A broad range of supportive services that can be integrated to address the needs of FSS participants;

(3) The support of its resident population; and

(4) The active support of the Chief Executive Officer (CEO) of the unit of general local government.

b. Rating and Ranking Factors for FSS.

(1) Supportive Community Relationships.

The FSS program must have broad based community support, including ties to both minority and non-minority communities, and utilize local public and private organizations that are willing to comment funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations,

foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the Program Coordinating Committee.

25—16 Points: The IHA has: (i) A strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(ii) Will further expand its existing base of support and/or the number of persons to be served, as evidenced by written commitments from additional entities to offer support and to coordinate support as participants in the proposed FSS program.

15—0 Points: The IHA meets only one of the two criteria set forth in paragraphs (i) and (ii) above.

(2) Supportive Services. A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable to attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counseling schedules may be important. Another important service may be transportation, which links the other services together. The IHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The IHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25—16 Points: The IHA has: (i) Actively worked with public and private service providers to offer supportive services which are comprehensive in scope and quality and include combinations of child care, transportation, job training and placement, counseling, education, money management parenting, and/or rehabilitation services to residents; and

(ii) Will further expand the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities which are providers of such services.

15—0 Points: The IHA meets only one of the two criteria set forth in (i) and (ii) above.

(3) Resident support. The IHA shall describe its efforts to establish and/or support Resident Councils (RCs), Resident Management Corporations (RMCs), Homeownership programs and resident-based economic development activities. The IHA shall also describe how its residents are involved generally in IHA planning and operations and specifically resident involvement for support service programming and delivery. A Resolution of Support by resident groups for the FSS programs shall be included, along with any plans the IHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the Program Coordinating Committee (PCC) and participation in the preparation of the Action Plan.

25—16 Points: The IHA has a history of resident involvement that includes successful resident participation in IHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the Program Coordinating Committee and participate in the preparation of the Action Plan.

15—0 Points: The IHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan.

(4) Chief Executive Officer Support. The CEO of the Unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past IHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc. for proposed FSS activities and services.

25—16 Points: The CEO of the unit of general local government and the IHA have successfully cooperated in the past in the provision of service-related activities for IHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc., for FSS activities and services.

15—0 Points: The CEO and the IHA have cooperated in the past, and the CEO has provided general support for the IHA or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc.

Total Possible FSS Points: 100.

2. Minimum Score

Applications that receive less than 60 points will not receive further consideration.

F. Program Guidelines

At 56 FR 49592, September 30, 1991, HUD published guidelines for implementation of the FSS program. IHAs and other interested parties must consult that Notice to acquaint themselves fully with the operational details of the FSS program. The IHA is required to implement FSS within a twelve-month period, and the IHA must not wait until the new units are constructed and occupied before implementing its FSS program.

II. New Development

A. Authority

1. Statutory Authority. Secs. 5 and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d); U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1992 (Pub. L. 102–139, 105 Stat 736, Approved October 28, 1991).

2. Indian housing regulations. Indian housing development regulations are published at 24 CFR part 905.

B. Development Allocation Amount

This NOFA announces that $194,751,572 is being made available for non-FSS IH development grants (new Indian housing units) for the fiscal year.

Funds needed for replacing units that have been approved for demolition or disposition must also be funded from the amount available for new IH development as a priority. HUD headquarters is allocating "off the top" $9,000,000 in accordance with 24 CFR 791.403, which has been determined to be an amount that will adequately meet the FY 1992 funding needs for demolition/disposition ($3.0 million), HOPE 1 ($2.5 million), and section 5(h)

replacement housing ($3.5 million), leaving $185,751,752 for allocation to the FOs for new development.

Each of the six FO service areas has been designated as the smallest practicable area for allocation of assistance. The funds available for new units in FY 1992 will be assigned to the FOs in accordance with 24 CFR 791.403. Funds allocated for replacement units that are not reserved by the FOs by August 1, 1992 will be distributed to the FOs in the same manner as the amounts for new units were allocated.

A competitive process, described in section II.E of this NOFA, will be used to select IHA applications to be funded for new Indian housing units. The following chart specifies the amount of grant authority available for new units for FY 1992 for the various FOs, and it includes funds to be expended on off-site sewer and water for the development of the housing units. (However, in order to meet the metropolitan/non-metropolitan requirements of section 213(d) of the Housing and Community Development Act of 1974, the Department may be precluded from awarding Indian housing development funds to certain metropolitan and non-metropolitan areas.)

Indian region	Est. No. of units	Amount
Chicago	383	$24,729,000
Oklahoma City	466	25,204,000
Denver	373	32,625,000
Phoenix	696	54,077,000
Seattle	175	14,150,572
Anchorage	299	34,966,000
Total	2,392	185,751,572

C. Eligibility for New Housing Units

All IHAs which have not been determined to be administratively incapable in accordance with 24 CFR 905.135, have been organized in accordance with 24 CFR 905.125 and 905.126, and have the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended, are invited to submit applications for new Indian housing units.

All IHAs that have developments assisted under the U.S. Housing Act of 1937, as amended, and meet the requirements of 24 CFR 905 Subpart M, may apply for funds for demolition or disposition, whether eligible for new units or not.

D. Development Award Application Process

1. Application Due Date

An IHA may submit an application(s) for a project at any time after the publication date of this NOFA, to the Indian FO having jurisdiction over the IHA applicant until 3:15 p.m., FO local time, on August 10, 1992 for new Indian housing units.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Application(s) shall be submitted on Form HUD-52730 and shall be accompanied by all the legal and administrative attachments required by the form and the items specified in the checklist. Where the provisions for the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application. Applications submitted by facsimile are not acceptable.

2. Application Kit

Application Form HUD-52730 for new IH units may be obtained from any Indian FO listed in appendix 1 of this NOFA, or from Indian Housing Development Handbook 7450.1, Chapter 2.

3. Submission of Complete Application

For a discussion ot what constitutes a complete application, see section III.A. of this NOFA. Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in appendix 1.

New Housing Time Table

a. Applications due from IHAs before 3:15 p.m., FO local time on August 10, 1992 for new Indian housing units.

b. FOs to initiate immediate screening. One working day after the application is received, FO staff will initiate screening for completeness.

c. FOs begin application review and rating within 14 calendar days after the application deadline.

d. Award announcement will be September 21, 1992.

e. Before approving proposed development program or modernization project, HUD will comply with the requirements of 24 CFR part 50.

4. Action on application

When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete, must demonstrate legal sufficiency, and the IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

5. Statutory Requirement Concerning Development Cost

In accordance with section 6(h) of the U.S. Housing Act of 1937, every application submitted in FY 1992 for a new construction development grant must be accompanied by evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation. In the alternative, the IHA may submit a certification that there is insufficient existing housing to undertake the development of housing through acquisition of existing housing or rehabilitation.

E. Selection Criteria and Ranking Factors.

1. Large Family Preference

The Department has determined that for the purposes of this NOFA the priority for families requiring three or more bedrooms will not be required. The large family preference, section 6(j) of the U.S. Housing Act of 1937, as amended, was repealed by the National Affordable Housing Act (NAHA) of 1990, Public Law 101-625. This determination is made, not withstanding the provision in 24 CFR 905.220.

2. Rating and Ranking

Complete and eligible applications will be ranked separately for each program. The score calculated for the application of an IHA that has not previously been funded will be adjusted, before ranking, by multiplying the IHA's score by a factor of 2.5 to compensate for lack of experience on which to base a rating. The rankings will be based on awarding points to each application for the following categories:

a. The relative unmet IHA need for housing units compared to the other eligible applications, based on IHA waiting lists and the total number of units in management and in the development pipeline. For IHAs that have not previously been funded, the points for this category will be 40. For all other IHAs, this need will be measured for each program type by dividing the number of families on the waiting list for the size of units involved, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. The maximum number of points an IHA can receive is 40 points. A waiting list of 500 or more applicants will be worth 40 points.

b. The relative IHA occupancy rate, compared to the occupancy rates of other eligible IHA applications. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Multifamily Information Retrieval System (MIRS) national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base an occupancy rate, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

c. Length of time since the last Program Reservation date. The number of calendar days from January 1, 1991 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of calendar days, since the last Program Reservation for any IHA. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points. Awards of demolition/disposition or family self-sufficiency units are not included in this calculation.

Where units have been awarded in a subsequent fiscal year as a result of an error in an earlier fiscal year, the calculation for length of time since the last Program Reservation date should be based on when the Program Reservation would have been made had the error not occurred.

d. Current IHA development pipeline activity. Each IHA will start with 20 points. For each IHA development that was not completed by January 1, 1991, points will be deducted as follows (for this purpose "completed" means the Date Of Full Availability (DOFA)):

(1) For each IHA development not having an approvable Development Program submitted within one year of Program Reservation date (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(2) For each IHA development not achieving construction start within 30 months (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

(3) For each IHA development not meeting HUD requirements for administration of development contracts as set forth in the regulations and handbooks, 4 points are deducted—up to a maximum deduction of 20 points.

(4) The maximum number of points an IHA can receive is 20 points. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category.

3. Computation

Scores for ranking shall be carried out to two decimal places (xx.xx).

4. Selection

a. The ranking process will produce an ordered list of IHAs that may receive funding. The order is established by the total number of points the application received in the rating process. The application with the highest point total will be funded first, the next highest will be funded second, until funds are exhausted.

b. The size of projects awarded shall be based upon the following table to ensure meaningful competition based on need. Exceptions to the maximum size of projects awarded based on the table shall be made by the Indian Field Office director only where good cause exists. Reductions may not be made based on the awarding of replacement units for HOPE or demolition/disposition.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above	300
750 to 999	200
500 to 749	150
400 to 499	100
300 to 399	80
200 to 299	60
199 or fewer	40

If an IHA that serves more than one distinct Indian community submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

5. Tie Breaker

In the case of ties, priority will be given to the application that has the highest ratio of preapproved sites to:

a. Units, and, if there is still a tie,

b. BIA-approved leases (or similar site control on non-trust land) for the proposed project site(s).

F. Requests for Amendment Funds

1. Amendment funds for FY '92 may not be used for FY '92 approved projects (i.e., FY '92 program reservations).

2. Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs, (2) amendment funds related to the impact of the change in calculation to Total Development Cost calculations mandated by Public Law 101–144 (103 Stat. 846), or (3) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests and that are not in response to the change in Total Development Cost calculations will be evaluated using the following order of priority:

a. Projects under construction with HUD-approved litigation settlement payable.

b. Projects that require a cost increase to cover immediate HUD-approved correction of a safety or health hazard that is not associated with off-site sewer and water needs.

c. Projects under construction with a cost increase needed to cove a HUD-approved off-site sewer and water component.

d. Projects under construction that require nominal HUD-approved change orders.

e. Projects with active Invitation to Bid or Request for Proposal status that require a nominal HUD-approved cost increase to execute construction contract or contract of sale.

f. Projects with an active Indian Health Service project summary that require a HUD-approved cost increase before a memorandum of agreement can be executed.

g. Projects that require a HUD-approved nominal cost increase to achieve project close-out.

h. Projects that require a HUD-approved cost increase for any reason not listed above.

III. Other Matters.

A. Corrections to Deficient Applications

Upon receipt of the application, HUD will note the date and time and provide written acknowledgement to the applicant indicating the date and time the application was received. The FO will complete review of the application within 14 calendar days after the application due date. The application must be complete, i.e., it must contain all the information called for by the appropriate checklist. For an FSS incentive award, that is Appendix 2, FSS Initial Screening Checklist; as well as Appendix 4, New Indian Housing Units Development Application Submission Checklist. For the development of new Indian housing units without an FSS incentive award, that is Appendix 4, New Indian Housing Units—Development Application Submission Checklist. The IHA must not have been disqualified for funding of new projects, as determined in accordance with 24 CFR 905.135.

If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the HUD FO shall notify the applicant in writing that the applicant has additional time to submit the missing item, or correct the technical mistake. HUD must receive the correction within 14 calendar days from the date of issuance of the HUD notification letter. If HUD does not receive the missing item within the required time period, the application shall be ineligible for further processing.

B. Metropolitan/Non-Metropolitan Designation

Funds will be allocated to the Indian FOs for use in either metropolitan or non-metropolitan uses. Implementation of the pertinent statutory and regulatory provisions (Section 213(d) and 24 CFR 791.403(a)), requires that of the total budget authority available during the fiscal year subject to fair share, at least 20 percent and not less than 25 percent shall be allocated for use in non-metropolitan areas. Compliance with these provisions is accomplished in the aggregate at the Assistant Secretary level or Departmental level for all programs covered by the statute. Therefore, allocations for the Indian Housing program may need to be modified to achieve this compliance. This identification does not apply to FY 1992 amendment funds or replacement housing funds. If the county in which the Indian housing site is located is part of a Metropolitan Statistical Area (MSA), then funds for that Indian housing will be considered metropolitan. Otherwise, funds will be considered non-metropolitan. Indian housing projects that contain both metropolitan and non-metropolitan housing should have a ratio of metropolitan to non-metropolitan housing established that will be maintained throughout the development of the project. The FO shall consult with the IHA on the ratio prior to Program Reservation.

The FO shall advise the OIH Development Division Director of the amounts of metropolitan and non-metropolitan funds, to allow headquarters to comply with the provisions of the Regulations at 24 CFR 791.403(a). The Department has the obligation to skip over metro or non-metro applications to meet statutory requirements.

FSS funds are exempt from the metropolitan/non-metropolitan requirement.

C. HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

1. Required Disclosures by Applicants

a. Disclosures. All applicants are required to disclose information with respect to any additional funds that can reasonably be expected to be received by them as assistance in excess of $200,000 (in the aggregate) during the fiscal year that will be related to the project.

Disclosure must be made relative to any related assistance from the Federal Government (agencies or instrumentalities other than HUD), a state, or a unit of general local government that is expected to be made available with respect to the project for which the applicant is seeking assistance.

The assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

b. Updates: The IHA applicant shall update this disclosure within 30 calendar days of any substantial change. This update is required during the period when an application is pending or assistance is being provided.

2. Prohibited Disclosures by HUD Employees

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the

subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her FO counsel, or headquarters counsel for the IH development program.

3. Applicant/Recipient Disclosures; Subsidy-Layering: HUD Reform Act

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880, Applicant/Recipient Disclosure/Update Report) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Subsidy-layering determinations. 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make copies of the decision with respect to each certification available to the public free of charge for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

D. Lobbying

Requirements concerning lobbying which are applicable to IHAs established under state law. Section 319 of the FY 1990 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), hereafter referred to as the "Byrd amendment," prohibits grantees from using any federally appropriated funds to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. The Department has determined that the requirements of the Byrd amendment do not apply to IHAs established by a Tribal government exercising its sovereign powers. However, the Byrd amendment does apply to IHAs established under State law. The Byrd amendment requires all IHAs established under state law to submit the following documents for applications for grants exceeding $100,000.

1. Certification

A certification that no federal appropriated funds will be used for lobbying purposes. The certification shall be submitted on the Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements."

2. Disclosure Document

A document disclosing any lobbying activities (on Standard Form—LLL, "Disclosure of Lobbying Activities"), where any funds other than federally appropriated funds will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts.

E. Conversions

Project conversion between program type (LR or MH) may only be considered where:

1. An IHA submitted projects for mutual help (MH) and low rent (LR), each scored high enough to be funded, and the IHA has the waiting list to support the conversion, or

2. If only one application was submitted and approved, the application upon re-ranking in the other program has to score at least 0.01 higher than the number of points achieved by the highest rated application from any IHA which was not funded. If neither circumstance exists, the request to convert will not be approved.

F. Errors in Ranking and Rating FY 1991

1. Errors made by a FO during the 1991 fiscal year's rating and ranking that resulted in a change of rank order detrimental to an IHA may be corrected as follows:

a. The FO will construct a hypothetical distribution that would have existed if the error had not been made, and

b. The FO will determine what the unit award/funding would have been for the IHA subject to the funds that were available at the time.

2. Remedial action will be taken for errors made by a FO as follows:

a. The FO will deduct any funds needed from the FY 92 fair share assigned to that FO before any FY 92 rating and rankings are completed.

b. A correction of an error for an IHA will not adversely affect the IHA participation on the FY 92 rating and ranking process. The IHA's application will be rated and ranked on the same basis as other applications and as if no error had been made.

G. The General Counsel

As the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This NOFA only announces the availability of Indian housing development funds for fiscal year 1992 to support IHA Family Self-Sufficiency programs. It also announces availability of funding for the development of new IHA units in fiscal year 1992.

H. The General Counsel

As the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

I. Demolition or Disposition

IHA Applications for Replacement Housing. IHA applications for demolition or disposition may require a

commitment for replacement housing units on a one-for-one replacement to comply with requirements of section 18 of the U.S. Housing Act, as amended. IHAs are to process requests for Demolition or Disposition in accordance with NOTICE PIH 91-17, "Fiscal Year 1992 Public and Indian Housing Demolition or Disposition Application Submission;" 24 CFR part 905, subpart M.

Dated: June 9, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Appendix 1. Listing of Indian Field Offices

1. Region V—Chicago

Chicago Office of Indian Programs, 77 West Jackson Boulevard, Chicago, Illinois 60606-3507, (312) 353-1282 or (800) 735-3239, TDD Number: 1-800-927-9275, 312-886-3741

2. Region VI—Oklahoma

Oklahoma City Indian Programs Division, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102-3202, (405) 231-4101, TDD Number: 405-231-4181, 405-231-4891

3. Region VIII—Denver

Denver Office of Indian Programs, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202-2349, (303) 844-2963, TDD Number: 303-844-6158

4. Region IX—Phoenix

Indian Programs Office, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004-2360, (603) 379-4156, TDD Number: 602-379-4461

5. Region X—Seattle

Seattle Office of Indian Programs, 1321 Second Avenue, Seattle, Washington 98101-2054, (206) 442-5298, TDD Number: 206-553-4351

6. Region X—Anchorage

Anchorage Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513-7537, (907) 271-4170, TDD Number: 907-271-4328

Appendix 2. FSS Initial Screening Checklist

A. Application Form HUD-52730:

—Complete application on Form HUD-52730.

—Attach all exhibits and tables as required. This includes a narrative demonstration that the IHA will be able to implement an FSS program within 12 months of application approval.

—Narrative response to Additional Rating Factors for FSS (see Appendix 3).

B. IHA Resolutions: IHA Resolution(s) containing the following:

1. A Statement that authorizes the submission of the application for units;

2. A statement explaining how solid waste disposal for the proposed development will be addressed;

3. A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development;

4. A statement advising HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty calendar days of any substantial change.

C. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead:

a. Certification Regarding Drug-Free Workplace Requirements, as required by 24 CFR 630(b), by submitting form HUD-50070.

b. Certification that the IHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

c. Certification that the IHA will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

d. If new construction is requested, certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

e. Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

f. For IHAs established under State law, a certification that no Federal appropriated funds will be used for lobbying purposes (Form "Certification for Contracts, Grants, Loans and Cooperative Agreements," SF-LLL-A).

D. Letters: Each application shall be accompanied by a letter of support signed by the CEO of the general local government indicating:

a. Support for the proposed Indian housing application and development (see section I.E.1.b.(4));

b. That the IHA is authorized to apply for planning funds for the development;

c. Assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR part 905, appendix I, Item 6).

E. Supporting Documentation: Each application must be accompanied by the following supporting documentation:

a. If new construction is proposed, evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation.

b. Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

c. Demonstration of financial feasibility for the proposed development.

d. Statement about the overall and relative need for assisted housing in the area.

F. Items That Should Be Submitted, If Not Previously Submitted: If not previously submitted, or if changes have occurred since previous submission, the IHA should furnish:

a. A certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the application is being made.

b. IHA Organization Transcript or General Certificate.

c. Tribal Ordinance.

d. Cooperation Agreement(s). Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy thereof) for the location involved, which is sufficient to cover the number of units in the application.

G. Optional Items: If the IHA is prepared, it may submit Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), as applicable.

H. FSS Certification: Resident Involvement. IHA certification that the application was developed with involvement and consultation of affected Indian housing residents, and includes a meaningful ongoing role for resident management corporations, resident councils, or other forms of resident involvement where RMCs and Rcs do not exist. This certification shall

include a support letter from RMCs and Rcs where they exist, or documentation of other resident involvement and consultation.

Appendix 3. Incentive Award. Additional FSS Selection Criteria and Rating and Ranking Factors

Additional Selection Criteria

In order to be selected for an incentive award, an IHA must meet the basic requirements for funding for new Indian housing units and provide evidence that is satisfactory to HUD that it has:

A. A broad base of support for an FSS program in its community;

B. A broad range of services that can be integrated to address the needs of FSS participants;

C. The support of its resident population;

D. The active support of the Chief Executive Officer (CEO) of the unit of general local Government; and

Additional Rating Factors

A. Supportive Community Relationships: The FSS program must have broad based community support, including ties to both minority and non-minority communities, and utilize local public and private organizations that are willing to commit funds, staff, equipment, the use of their buildings and equipment, training assistance, employment opportunities, or other support. Such organizations include local governments, businesses, religious organizations, private non-profit service providers, educational and training institutions, civic organizations, foundations, corporations, and local benefit providers. A successful FSS program must have a broad range of commitments from public and private employers, trainers, counselors and service providers. Ideally, representatives of community groups, organizations and businesses also will serve on the Program Coordinating Committee.

25—16 Points: The IHA has: (1) A strong, coordinated, varied base of community support as evidenced by described existing working relationships with a variety of public/private resources in the community, including previous commitments of funds, staff, equipment, the use of buildings and equipment, training assistance or employment opportunities; and

(2) Will further expand its existing base of support, as evidenced by written commitments from additional entities to offer support and to coordinate support as participants in the proposed FSS program.

15—0 Points: The IHA meets only one of the two criteria set forth in paragraphs (1) and (2) above.

B. Supportive services. A successful FSS program must offer a wide variety of services to address the needs of FSS participants that can be integrated into meaningful assistance for families. A key consideration relates to the fact that the services must be coordinated in their delivery and appropriate in scope to the needs of the residents. For example, quality child-care, capable of attending to a variety of age groups and operating a sufficient number of hours per week to accommodate work, training, and/or counseling schedules may be important. Another important service may be transportation, which links the other services together. The IHA shall describe past services provided by others to its residents, assess the range and depth of the services, and state how they might be transferred to an FSS program. The IHA shall include written commitments of support from organizations and entities willing to provide services under FSS.

25—16 Points: The IHA has: (1) actively worked with public and private service providers to offer supportive services which are comprehensive in scope and quality and include combinations of child care, transportation, job training and placement, counseling, education, money management, parenting, and/or rehabilitation services to residents; and

(2) Will further expand the kinds of services and/or number of persons to be served as evidenced by written commitments from identified entities who are providers of such services.

15—0 Points: The IHA meets only one of the two criteria set forth in (1) and (2) above.

C. Resident Support. The IHA shall describe its efforts to establish and/or support Resident Councils (Rcs), Resident Management Corporations (RMCs), Homeownership programs and resident-based economic development activities. The IHA shall also describe how its residents are involved generally in IHA planning and operations and specifically resident involvement for support service programming and delivery. A Resolution of Support by resident groups for the FSS programs shall be included, along with any plans the IHA has developed for including resident participation in the development and operation of FSS programs. This may include resident membership on the Program Coordinating Committee (PCC) and participation in the preparation of the Action Plan.

25—16 Points: The IHA has a history of resident involvement that includes successful resident participation in IHA planning and operations, generally, and specifically incorporates resident involvement for support service programming and delivery. This is evidenced by described active involvement in Mutual Help Homeownership programs, economic development activities, etc., and there is written evidence of resident support for the application. Residents are, or will be, as described, represented on the Program Coordinating Committee and participate in the preparation of the Action Plan.

15—0 Points: The IHA has established resident initiatives and resident involvement does occur; there is movement toward greater participation. Residents will, as described, be represented on the PCC and participate in preparation of the Action Plan.

D. Chief Executive Officer Support: The CEO of the unit of general local government must evidence active support for the FSS program. CEO consultation is required in the development of the PCC and the preparation and implementation of the Action Plan. In evaluating this factor, HUD will look at past IHA undertakings that have involved the CEO and commitments provided by the CEO pledging local governmental funds, staff, equipment, use of buildings and property, etc. for proposed FSS activities and services.

25—16 Points: The CEO of the unit of general local government and the IHA have successfully cooperated in the past in the provision of service-related activities for IHA residents. The CEO has expressed strong, written support for the FSS application and has, by written commitment, pledged cooperation for expansion of such support through local governmental funds, staff, equipment, use of buildings and property, etc., for FSS activities and services.

15—0 Points: The CEO and the IHA have cooperated in the past, and the CEO has provided general support for the IHA or has committed to provide support in the future for an FSS program through funding, use of facilities, staff, etc.

Total Possible FSS Points: 100.

Appendix 4. New Indian Housing Units. Development Application Submission Checklist

It Is the Responsibility of the IHA To Meet the Requirements of the Check List

Each application must contain the following:

I. ______ Components That Address the Selection Criteria. The applicant must provide a narrative and supporting documentation that are responsive to the selection criteria at section II.E. of this NOFA. This includes, but is not limited to, a description of the proposed project, how the grant funds shall be used, and various kinds of information which are necessary in order to apply the selection criteria/rating factors.

II. Application Form HUD–52730:

A. ______ Complete application on Form HUD–52730.

B. ______ Attach all exhibits and tables as required.

III. IHA Resolution(s): Each application must be accompanied by an IHA Resolution which contains the following, or it will be considered non-responsive. (To correct minor technical deficiencies, refer back to section III.A.)

A ______ A statement that authorizes the submission of the application for units.

B. ______ A statement explaining how solid waste disposal for the proposed development will be addressed.

C. ______ A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.

D. ______ The IHA Resolution must advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty calendar days of any substantial change.

IV. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead. (To correct minor technical deficiencies, refer back to section III.A.)

A. ______ Certification Regarding Drug-Free Workplace Requirements as directed by 24 CFR 24.630(b).

B. ______ Certification that the IHA will comply with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

C. ______ Certification that the IHA will comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

D. ______ Certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

E. ______ Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

F. ______ For IHAs established under state law, a certification that no federal appropriated funds will be used for lobbying purposes. (Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements.")

G. ______ Where applicable, and only for IHAs established under state law, a statement disclosing lobbying activities using other than federal appropriated funds. (Standard Form—LLL, "Disclosure of Lobbying Activities.")

V. Letters: Each IHA application must be accompanied by a letter of support signed by the CEO of the general local government indicating (to correct minor technical deficiencies, refer back to section III.A)

A. ______ support for the proposed application and development.

B. ______ an authorization to apply for planning funds for the development.

C. ______ where applicable, assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR 170; 57 BIAM 4 and Supplement 4; and 24 CFR Part 905 B, Appendix I, Item 6).

VI. Supporting Documentation: Each application must be accompanied by the following supporting documentation:

A. ______ Evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation if there is no certification to this effect by the IHA or if there is an IHA certification of insufficient existing housing.

B. ______ Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

C. ______ Demonstration of financial feasibility for the proposed development—that there is a market, and that the required annual operating subsidy corresponds to the performance funding system annual expense level.

D. ______ Statement about the overall and relative need in the area.

E. ______ Waiting list of applicant families by program type (LR or MH) and with a certification that the waiting list is supported by current applications from eligible families.

F. ______ Identify sites in the application in accordance with sections 905.230 and 905.245.

VII. Items That Should Be Submitted, If Not Previously Submitted:

A. ______ Certified copy of the transcript of proceedings containing the IHA resolution pursuant to which the application is being made.

B. ______ IHA Organization Transcript or General Certificate.

C. ______ Tribal Ordinance.

D. ______ Cooperation Agreements. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

VIII. Optional Items: A. ______ Preliminary Site Reports indicating pre-approved sites, and BIA-approved leases for the proposed project site(s), if any.

[FR Doc. 92–13908 Filed 6–12–92; 8:45 am]

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Part VII

Department of Health and Human Services

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs.

SUMMARY: Pursuant to the May 11, 1992 court decision in *Gay Men's Health Crisis* v. *Sullivan*, No 88–CIV–7482 (S.D.N.Y. 1992), the "Requirements for Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" are being revised. The interim revisions in the terms and conditions are described below.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control, (404) 639–1480.

SUPPLEMENTARY INFORMATION: Since 1985, the Centers for Disease Control (CDC), as part of the terms and conditions for receipt of CDC funds for human immunodeficiency virus (HIV) prevention programs, has required that all educational and related program materials be reviewed by a Program Review Panel designated by the recipient. Since education about preventing HIV transmission involves effectively presenting sensitive subject matter, the purpose of this requirement has been to avoid disruptions of CDC-funded programs by requiring a careful consideration of the content and intended audience of the materials and programs. A guidance document for this review, entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," was last revised and published in the **Federal Register** on March 30, 1992 (57 FR 10794).

On May 11, 1992, the U.S. District Court for the Southern District of New York found unconstitutional the use of the "offensiveness" standard by Program Review Panels which review AIDS education materials and activities in CDC assistance programs. *Gay Men's Health Crisis* v. *Sullivan*, 88–CIV–7482 (S.D.N.Y. 1992).

On May 27, 1992, the court enjoined CDC from further application or enforcement of the "offensiveness" standard, as provided in paragraph 1.b. and 2.d. of the Revised Grant Terms published on March 30, 1992. Accordingly, effective immediately, recipients of CDC funds are not to use the "offensiveness" standard in reviewing CDC-funded AIDS education materials.

In addition to the finding regarding the constitutionality of the "offensiveness" standard, the court in the May 11, 1992 Gay Men's Health Crisis decision, erroneously indicated that section 2500 of the Public Health Service Act ("PHS Act"), 42 U.S.C. 300ee, and section 318 of the PHS Act, 42 U.S.C 247c, provide the statutory authority for CDC's AIDS prevention programs. In reality, CDC has relied upon the totally separate assistance authority contained in sections 301 and 317 of the PHS Act, 42 U.S.C. 241 and 247b, for CDC's AIDS prevention programs. Although section 2500, et seq., was passed by Congress in 1988 as part of the Health Omnibus Programs Extension (HOPE) Act, Congress has never appropriated funds to CDC to carry out AIDS activities under the HOPE Act.

Nevertheless, because of the May 27, 1992 order of the District Court, and in order to maintain program continuity, CDC has decided, as a matter of discretionary policy, to use the language set forth in section 2500 of the PHS Act as the interim standard for review of AIDS educational materials and programs in place of the language enjoined by the court. This decision by CDC does not reflect a change in position of the agency with respect to the fact that actual funding authority in FY 1992 for CDC's AIDS prevention programs is contained in sections 301 and 317 of the PHS Act.

The Centers for Disease Control thus disagrees with the findings of the court in the Gay Men's Health Crisis decision, and is contemplating seeking an appeal and stay of this decision. In the interim period of time, consistent with the District Court's opinion, recipients in CDC assistance programs should adhere to the revisions of the March 30, 1992 grant terms and conditions which are set forth below:

1. Section 1.b. of the "Basic Principles" section of the document is revised to provide as follows:

"b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500 (b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee (b), (c), and (d), as follows:

'*Sec. 2500. Use of Funds.*

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.' "

2. Section 2.d. of the "Program Review Panel" section of the document is revised to provide as follows:

"d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b."

In the event that further court action in this matter or other developments necessitate a further revision of this

document, the agency will provide timely notice of those further revisions.

The following interim revised terms and conditions, reprinted below in their entirety, are effective immediately.

Dated: June 9, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations Centers for Disease Control.

CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS

Interim Revisions June 1992

1. Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. These principles are intended to provide guidance for the development and use of educational materials, and to require the establishment of Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

a. Written materials (e.g., pamphlets, brochures, fliers), audiovisual materials (e.g., motion pictures and video tapes), and pictorials (e.g., posters and similar educational materials using photographs, slides, drawings, or paintings) should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain less risky practices concerning HIV transmission.

b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee(b), (c), and (d), as follows:

"*Sec. 2500. Use of Funds*

(b) *Contents of Programs.*—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) *Limitation.*—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) *Construction.*—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

c. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

d. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. No. S-2]).

2. Program Review Panel

a. Each recipient will be required to establish or identify a Program Review Panel to review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Whenever feasible, CDC funded community-based organizations are encouraged to use a Program Review Panel established by a health department or an other CDC-funded organization rather than establish their own panel. The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) and CDC-developed materials do not need to be reviewed by the panel unless such review is deemed appropriate by the recipient. Members of a Program Review Panel should:

(1) Understand how HIV is and is not transmitted; and

(2) Understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

b. The Program Review Panel will be guided by the CDC Basic Principles (in the previous section) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the recipient organization or local governmental jurisdiction.

c. Applicants for CDC assistance will be required to include in their applications the following:

(1) Identification of a panel of no less than five persons which represent a reasonable cross-section of the general population. Since Program Review Panels review materials for many intended audiences, no single intended audience shall predominate the composition of the Program Review Panel, except as provided in subsection (d) below. In addition:

(a) Panels which review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience either through representation on the panels or as consultants to the panels.

(b) The composition of Program Review Panels, except for panels reviewing materials for school-based populations, must include an employee of a state or local health department with appropriate expertise in the area under consideration who is designated by the health department to represent the department on the panel. If such an employee is not available, an individual with appropriate expertise, designated by the health department to represent the agency in this matter, must serve as a member of the panel.

(c) Panels which review materials for use with school-based populations should include representatives of groups such as teachers, school administrators, parents, and students.

(d) Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of (a), (b), and (c), above. However, membership of the Program Review Panel may be drawn predominately from such racial and ethnic populations.

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of Section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b.

e. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals which are under development;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to the panel; and

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

[FR Doc. 92-13973 Filed 6-12-92; 8:45 am]

BILLING CODE 4160-18-M

federal register

Monday
June 15, 1992

Part VIII

Department of Education

Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice of Final Priority and Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

Technology, Educational Media, and Materials for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1992 and 1993 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program.

SUMMARY: The Secretary announces a final priority for the Technology, Educational Media, and Materials for Individuals with Disabilities Program to ensure effective use of program funds and to direct funds to an area of identified need during fiscal years 1992 and 1993.

EFFECTIVE DATES: This priority takes effect July 30, 1992 or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 732-1099. Deaf and hard of hearing individuals may call (202) 732-6153 for TDD services.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials in the education of children and youth with disabilities. In creating part G. of the Individuals with Disabilities Education Act, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by promoting the effective and efficient use of technology, media, and materials among special education, related services, and regular education personnel. The priority thereby seeks to help children and youth with disabilities reach the high levels of academic achievement called for by the Goals.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

On April 16, 1992, the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 13602-13604).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, one party submitted a comment. An analysis of this comment follows. Technical and other minor changes are not addressed.

Comment: One commenter recommended that the priority should address the need to develop systems and equipment for transcribing from the technology of print-text publishers to hard-copy or refreshable braille textual materials.

Discussion: The Secretary concurs that the activities recommended by the commenter have potential value, and believes that they are included under the rubric of the priority as written. Rather than prescribe specific activities, the Secretary prefers to allow individual applicants to propose and justify activities.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that respond to the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Priority—Practice Improvement Center on the Effective and Efficient Use of Technology, Media, and Materials in the Provision of Education and Related Services to Children and Youth with Disabilities (CFDA 84.180N)

Background

Effective and efficient use of technology, media, and materials can support two objectives of the Individuals with Disabilities Education Act (IDEA): (1) Designing instruction to meet the unique needs of children with disabilities, and (2) maximizing the extent to which children with disabilities can be appropriately educated with children who do not have disabling conditions.

Yet, previous Office of Special Education Programs supported research, as well as field-initiated research, has found that there are many barriers to the effective and efficient use of technology, media, and materials with children and youth with disabilities. Many instructional products are not designed to fit the needs of children and youth with disabilities. Technology, media, and materials are not always compatible with the curriculum or with other instructional procedures. Assistive devices are not always fully appropriate to the needs of specific children and youth with disabilities or the settings in which they must function. Teachers using technology, media, and materials do not always have access to sufficient training and assistance in the schools.

Purpose

The purpose of this priority is to establish a national practice improvement center, the mission of which is to promote the effective and efficient use of technology, media, and materials by improving the professional practices of special education, related services, and regular education personnel providing special education and related services to children and youth with disabilities. The center must be national in scope and must encompass the full range of disabling conditions.

The phrase "technology, media, and materials" encompasses a broad range of products and systems, including books and other textual materials, audiotapes, videotapes, videodiscs, computer hardware and software, compact disks and CD-ROM, broadcast media such as television and radio, multimedia, and other products and systems that store, convey, and process information. Specifically included are instructional technologies, media, and materials, as well as "assistive technology devices" as defined in section 602(a)(25) of the IDEA.

Effective and efficient use of technology, media, and materials is based on compatibility with (a) the needs of children and youth with disabilities and their families; (b) curriculum, instruction, and related services; and (c) systems and procedures used to provide special education and related services and to promote access and inclusion in educational activities. Effective and efficient use must be associated with positive outcomes for children and youth with disabilities and their families.

This national center must improve professional practices, which include a range of functions performed by teachers, administrators, and others in planning, administering, delivering, and evaluating special education and related services. Those practices are based upon professional competencies and attitudes, and on organizational factors such as policies, resources, and linkages. Practice improvement may entail professional development,

organizational development, implementation of innovations, knowledge access and use, collaboration and linking, and other processes. Practice improvement should be associated with positive outcomes for children and youth with disabilities and their families.

The center must be a catalyst and facilitator that collects and anaylzes available information, validates and extends the information, tests approaches for improving practices, and promotes the exchange and use of information.

Strategic Plan

Given the scope and magnitude of the center's national mission, it is essential for the center to formulate a strategic plan to focus and guide its efforts. The strategic plan must include the following:

(1) A statement and justification of critical goals for accomplishing the center's mission

The critical goals in the strategic plan must address processes that, singly or in combination, have significant potential for improving professional practices in the efficient and effective use of technology, media, and materials. The practices of teachers, administrators, and others must be targeted directly or indirectly. The goals must be selected and justified on the basis of their potential for meeting needs and accomplishing the center's mission productively and efficiently.

(2) An analysis of factors that may impede or facilitate attainment of the goals

The goals must be analyzed to identify such factors as needs, challenges, resources, and issues that may affect their attainment. These factors must then be reflected in the objectives and activities developed for attaining the goals.

(3) A set of objectives and activities that translate the goals into operational plans for the center

Although the strategic plan is subject to modification during the course of the center's operation, it must be developed as a five-year plan. Goals, objectives, and activities must be formulated for this entire period. The plan must include five general types of activities—analysis and synthesis of extant information, research studies, developing and supporting networks and exchanges, knowledge access and use, and evaluation. These activities are discussed below. Additional activities may be performed as needed to accomplish the center's goals and mission.

A plan for refining the proposed strategic plan during the initial months of the project and a plan for annually reviewing and revising the strategic plan must also be included.

Required Center Activities

Analysis and Synthesis of Extant Information

The center must provide for the ongoing collection, review, and analysis of extant information on the use of technology, media, and materials with children and youth with disabilities and on approaches for improving professional practices. Research findings must be used, if available. For critical topics where research findings are limited or inconclusive, the center must use information such as program descriptions and evaluations, theoretical papers, policy statements, expert opinions, etc., as well as research findings. Procedures for collecting, analyzing, interpreting, and reporting information must be rigorous and systematic.

Research Studies

The center must conduct or commission carefully targeted research studies for validating or extending its information analyses and testing approaches for improving practices in the use of technology, media, and materials. Both qualitative and quantitative techniques may be employed, including group and single-subject designs, surveys, case studies, and focus groups.

Developing and Supporting Networks and Exchanges

The center must establish and maintain contacts with institutions of higher education; professional associations; Federal, State and local agencies; projects engaged in activities relevant to the center's mission; practitioners; and other individuals and organizations who can contribute to the center's efforts. These contacts are intended to facilitate a range of activities. For example, ongoing communication with members of the research community will gain access to research issues, activities, and findings, allow possible research collaboration, and provide a means for distributing the center's findings and influencing future research trends. Ongoing communication with practitioners and their representative groups will guide the development of strategic plans, gain access to the practitioners' perspectives, obtain knowledge for improving practice, and provide a means for evaluating and distributing the center's products.

Contacts may be accomplished through the full range of communication mechanisms, including in-person contact, print interaction and procedures, use of media such as electronic networks, and computer or telephone-based conferencing.

The center must coordinate its activities, as appropriate, with recipients of grants under the Technology Related Assistance Act (Pub. L. 100–407). In addition, the center must maintain an ongoing exchange of information with the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities (CFDA 84.180M) at the University of Oregon. This ongoing exchange must include (1) sharing information about ongoing activities and resources; (2) joint planning; and (3) collaborating in each other's activities, to the extent appropriate.

Knowledge Access and Use

Providing access to knowledge and promoting its use are critical to the center's mission and must include a range of functions beyond increasing general awareness and distributing center information. Knowledge access and use activities must include communication between the center and targeted audiences and exchange of information between practitioners and among different communities. Activities must also be tailored for various uses of information, such as selection, adoption, and implementation of improved practices.

Throughout the project, the center must engage targeted audiences in the development, exchange, distribution, and use of center materials. Formats for the exchange, distribution, and use of center information may include a range of media formats (e.g., videotape, audiotape, etc.) as well as print formats.

Evaluation.

Evaluation activities must address both "proximal" and "distal" effects of the center's activities. Proximal (immediate) effects include impact on audiences having direct contact with center products, information, and activities. Distal (more long-term) effects include indicators or widespread impact on the practices of special education, related services, and regular education personnel in using technology, media, and materials with children and youth with disabilities. Evaluation activities

must reflect a clear operational definition of professional practices needed for the effective and efficient use of technology, media, and materials.

Time Frame

The Secretary will approve a cooperative agreement with a project period, of up to 36 months. The Secretary may make a continuation award for an additional two-year project period, subject to the requirements of 34 CFR 75.253(a). Activities in the first year must include staffing, refinement of the strategic plan, specification and implementation of activities for analysis and synthesis, research, networks and exchanges, knowledge access and use, and evaluation. At the beginning of each subsequent year, the strategic plan must be reviewed and revised as needed and associated activities must be defined and implemented.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance and the added contribution to the purpose of the project that would accrue from the continuation.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR Part 333, as amended on October 22, 1991 (56 FR 54686–54705).

Program Authority: 20 U.S.C. 1461.

(Catalog of Federal Domestic Assistance Number 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program).

Dated: June 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–14011 Filed 6–12–92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.180N]

Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year 1992

PURPOSE OF PROGRAM: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials in the education of children and youth with disabilities.

ELIGIBLE APPLICANTS: The eligible applicants are institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: July 31, 1992.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: September 30, 1992.

APPLICATIONS AVAILABLE: June 19, 1992.

AVAILABLE FUNDS: $500,000 per year.

ESTIMATED NUMBER OF AWARDS: 1.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months (including 2 year option).

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333, as amended on October 22, 1991. See 56 FR 54686–54705.

Priority

The notice of final priority, entitled "Practice Improvement Center on the Effective and Efficient Use of Technology, Media, and Materials in the Provision of Education and Related Services to Children and Youth with Disabilities," published elsewhere in this issue of the **Federal Register**.

This priority supports AMERICA 2000, the President strategy for moving the Nation toward the National Education Goals, by promoting the effective and efficient use of technology, media, and materials among special education, related services, and regular education personnel. The priority thereby seeks to help children and youth with disabilities reach the high levels of academic achievement called for by the Goals.

FOR APPLICATIONS OR INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 732–1099. Deaf and hard of hearing individuals may call (202) 732–6153.

Program Authority: 20 U.S.C. 1461.

Dated: June 10, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–14012 Filed 6–12–92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
June 15, 1992

Part IX

Department of Education

34 CFR Part 769

Library Literacy Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 769

RIN: 1850-AA43

Library Literacy Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary amends the regulations governing the Library Literacy Program, title VI of the Library Services and Construction Act (LSCA title VI). This action is taken to implement revisions made to the program by the National Literacy Act (Pub. L. 102-73) enacted in July 1991. It also provides the first major revision to the regulations since the program began operation in 1986.

DATES: Comments must be received on or before July 30, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol Cameron Lyons, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208-5571.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Carol Cameron Lyons. Telephone: (202) 219-1321. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by encouraging coordination of adult literacy programs, assessments of local needs, and other adult literacy activities. In addition to implementing the recent statutory changes, the proposed regulations clarify and update certain sections of the regulations. The selection criteria are revised to reflect changes in the Education Department General Administrative Regulations (EDGAR) and in program administration made since the program regulations were written in 1985, before the program began operation in 1986.

Changes include implementing a new statutory priority for programs and services that demonstrate need and coordination, and revising the definition of "literacy" as required by the National Literacy Act. A new definition of "local public library" clarifies that a library that is an integral part either of a non-public library or of a library that is not primarily a local library is not eligible to receive funds. The regulations also provide a clearer description of program activities and update the selection criteria in § 769.31 of the regulations, especially to implement the new statutory priority.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small local public libraries receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local public libraries because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 769.31 contains information collection rquirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State and local public libraries are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 18 hours per response for 600 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 404, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Public Law 102-73 (the National Literacy Act) requires the Secretary to give priority to applicants that propose programs and services that will be delivered in the areas of greatest need and coordinated with other literacy services in the community. Public Law 102-73 further specifies the types of indicators of need the Secretary is to consider. Those indicators are spelled out in proposed § 769.31, where the Secretary proposes the award of up to 25 points each for "Need" and "Coordination" criteria. The Secretary particularly invites comments on what types of data and information are available that applicants could provide and that would be comparable across projects.

List of Subjects in 34 CFR Part 769

Education, Education of disadvantaged, Grant programs—education, Libraries, Literacy program—libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.167, Library Literacy Program)

Dated: March 20, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to revise part 769 of title 34 of the Code of Federal Regulations to read as follows:

PART 769—LIBRARY LITERACY PROGRAM

Authority: 20 U.S.C. 375, unless otherwise noted.

Subpart A—General

§ 769.1 What is the Library Literacy Program?

Under the Library Literacy Program the Secretary provides Federal financial assistance for adult literacy projects.

(Authority: 20 U.S.C. 375(a))

§ 769.2 Who is eligible for an award?

State libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

(Authority: 20 U.S.C. 375(a))

§ 769.3 What regulations apply?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 769.

(Authority: 20 U.S.C. 375 (a))

§ 769.4 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public library
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Library Services and Construction Act, as amended.

Adult means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

Library materials means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for individuals with disabilities.

Literacy means an individual's ability to read, write, and speak in English, compute, and solve problems at levels of proficiency necessary to function on the job and in society; to achieve one's goals; and to develop one's knowledge and potential.

(Authority: Pub. L. 102–73, Sec. 3)

Literacy program means a project or activity designed to help individuals achieve literacy.

Local public library means a public library that is not an integral part of a State or Federal agency and that is authorized to independently apply for, receive, and carry out an LSCA Title VI grant.

State Library means, for this program, the State library administrative agency.

(Authority: 20 U.S.C. 351 *et seq.*)

Subpart B—What Types of Projects Does the Secretary Fund?

§ 769.10 For what types of projects does the Secretary provide assistance to State libraries?

(a) The Secretary provides assistance to State libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs for adults.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Conducting statewide library literacy initiatives.

(2) Assessing literacy needs.

(3) Promoting cooperation between libraries and other agencies in providing literacy programs for adults.

(4) Training librarians and volunteers in the development of literacy programs or in recruitment, training, collection development, evaluation, and other activities to implement a local library literacy program.

(5) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) Individuals with disabilities.

(ii) The institutionalized;

(iii) Older Americans; and

(iv) Other disadvantaged individuals.

(Authority: 20 U.S.C. 375 (b))

§769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs for adults.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Disseminating information about literacy programs.

(2) Training librarians and volunteers to serve local literacy programs.

(3) Developing a collection of literacy materials or acquiring tutor and student literacy materials.

(4) Conducting literacy programs for adults.

(5) Serving as the headquarters for a literacy program.

(6) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(Authority: 20 U.S.C. 375(c))

Subpart C—How Does One Apply for an Award?

§ 769.20 How do State libraries review applications submitted under the Library Literacy Program?

An applicant shall use the State comment procedures in 34 CFR 75.156–75.160 to afford the State library administrative agency an opportunity to comment on any application for a grant. For purposes of complying with these procedures—

(a) As used in 34 CFR 75.156–75.160—

(1) *State* means the State library administrative agency; and

(2) *Appropriate State official* means the head of the State library administrative agency.

(b) Notwithstanding the provisions of § 75.159(a), the State library administrative agency may review the application only for consistency with its long-range program required under titles I, II, and III of the Act.

Authority: 20 U.S.C. 351d(h))

Subpart D—How Does the Secretary Make an Award?

§ 769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §769.31.

(b) The Secretary awards up to 115 possible points for the criteria in §769.31.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 375(d))

§ 769.31 What selection does the Secretary use?

(a) *Need.* (25 points)

(1) The Secretary reviews each application to determine the extent of the need for the proposed project.

(2) The Secretary considers—

(i) The extent of the concentration of adults who do not have a secondary education or its equivalent in the area to be served by the project; and

(ii)(A) Whether are community or financial resources available that could be used to establish the project without Federal assistance; or

(B) The per capita income and rate of unemployment or underemployment in the area to be served by the project.

(3) To earn points under this criterion, an applicant must have earned at least one point under paragraph (b) of this section.

(b) *Coordination.* (25 points)

(1) The Secretary reviews each application to determine the extent to which the applicant coordinates its services with literacy organizations and community based organizations providing similar or related literacy services.

(2) The Secretary considers—

(i) The extent to which the applicant—

(A) Has identified other providers of literacy-related services, including state or local adult education agencies or community based organizations, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The quality of the specific measures for cooperation and coordination the applicant has proposed.

(3) To earn points under this criterion, an applicant must have earned at least one point under paragraph (a) of this section.

(Authority: 20 U.S.C. 375)

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) A clear description of how the proposed literacy services would meet the needs of the population to be served;

(iii) Specific intended outcomes that—

(A) Will accomplish the purpose of the program;

(B) Are attainable within the project period, given the project's budget and other resources;

(C) Are susceptible to evaluation; and

(D) Are objective and measurable.

(iv) An effective plan of management that ensures proper and efficient administration of the project;

(v) High quality in the applicant's plans for using its resources and personnel to achieve each objective and intended outcome during the period of federal funding;

(vi) A distinct role for State or local libraries;

(vii) An efficient timeline for meeting each objective; and

(viii) An effective plan for providing equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Quality of key personnel. (15 points)*

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director or coordinator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that the project director and other key personnel will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers the extent to which methods of evaluation—

(i) Are appropriate for the project;

(ii) Will determine how successful the project is in meeting its intended outcomes; and

(iii) Are objective and produce data that are measurable quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 375)

[FR Doc. 92-14015 Filed 6-12-92; 8:45 am]

BILLING CODE 4000-01-M

Monday
June 15, 1992

Part X

Department of Education

Dwight D. Eisenhower National Program for Mathematics and Science Education; State Curriculum Frameworks for Mathematics and Science Competition; Notice Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

[CFDA No. 84.168A]

Dwight D. Eisenhower National Program for Mathematics and Science Education; State Curriculum Frameworks for Mathematics and Science Competition

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 1992.

Purpose of Program: To award grants to support projects of national significance designed to improve the quality of teaching and instruction in mathematics and science in the nation's elementary and secondary schools, and increase the access of all students to that instruction.

Eligible Applicants: State educational agencies (SEAs), or SEAs working with other entities of their own choice such as the following: local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions.

Deadline for Transmittal of Applications: July 29, 1992.

Deadline for Intergovernmental Review: September 29, 1992.

Applications Available: June 19, 1992.

Available Funds: $2,000,000.

Estimated Range of Awards: $150,000–$500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 755.

SUPPLEMENTARY INFORMATION: On May 1, 1992, the Secretary published a notice of proposed priorities for State Curriculum Frameworks for Mathematics and Science in the **Federal Register** (57 FR 19014). The public comment period for the notice of proposed priorities ended on June 1, 1992.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is necessary to solicit applications on the basis of the notice of proposed priorities in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1992).

Eight parties, almost all of whom were supportive of the priority, commented on the notice. The Secretary anticipates making two changes in response to these comments. Section (a) will allow grantees to build on science standards emerging from major curriculum reform projects, such as those of the National Science Teachers Association, the American Association for the Advancement of Science, the Mathematical Sciences Education Board, and the National Academy of Sciences, rather than require that the frameworks build on these projects. In addition, the priority will require that educators with expertise in working with students with disabilities be included in the project's advisory committee.

This notice contains the priority as the Secretary expects to issue it in the notice of final priority. Applicants should prepare their applications on the basis of this priority. If the Secretary makes any substantive changes to this priority before issuing the notice of final priority, applicants will be given an opportunity to revise their applications.

The Secretary solicits applications for this absolute priority.

Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 755.12(c) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

State Curriculum Frameworks for Mathematics and Science Education

Projects in which States, or States in collaboration with other entities, carry out all the following activities:

(a) Develop a State curriculum framework, kindergarten through grade 12 (K–12), that reflects world-class standards and will be made available for local schools and districts to implement, or to adapt for themselves. These frameworks must cover mathematics or science or both disciplines. The frameworks must embody coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. Frameworks must build upon nationally-recognized mathematics standards developed by the National Council of Teachers of Mathematics and science standards emerging from major curriculum reform projects, such as the National Science Teachers Association's Scope, Sequence, and Coordination project, the American Association for the Advancement of Science's Project 2061—Science for All Americans, and the work of the Mathematical Sciences Education Board and the National Academy of Sciences. The design of these frameworks must involve college and university scholars and specialists as well as teachers and administrators from public or private schools working together as equal collaborators.

(b) Develop model guidelines for effective approaches to teacher education and certification based upon the world-class standards and the State curriculum framework tied to those world-class standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The collaborative work of designing these model guidelines must also involve scholars and specialists, school teachers, and school administrators from public or private schools.

(c) Develop criteria for teacher recertification, and design and pilot test a model, cost-effective inservice professional development program for teachers based upon the world-class standards and the State curriculum framework tied to those standards. Again, the work of designing these programs must involve collaboration among scholars and specialists, school teachers, and school administrators from public or private schools. In addition, these programs must be pilot tested in a variety of schools throughout the State.

(d) Provide the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project, each project must establish an overall advisory committee that includes classroom teachers, educators with expertise in working with students with disabilities, university scholars in mathematics and science, State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, and State and local boards of education, and representatives of business, labor, industry, and the community at large.

Selection Criteria

The Secretary evaluates an application on the basis of the selection criteria in 34 CFR 755.32. Under 34 CFR 755.30, the Secretary is authorized to distribute an additional 10 points among the criteria to bring the total to a

maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

National Significance

(34 CFR 755.32(f)). Ten (10) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Becky Wilt, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching (FIRST) Office, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524. Telephone (202) 219-1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2992.

Dated: June 10, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-14014 Filed 6-12-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
June 15, 1992

Part XI

Department of Education

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training Program; Proposed Priorities, Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1993.

SUMMARY: The Secretary proposes priorities for fiscal year (FY) 1993 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest needs. These priorities are intended to ensure the continued availability of closed-captioned television, to expand the cultural experiences available to children who are deaf and hard of hearing, and to disseminate information about new media technologies for persons with sensory disabilities.

DATES: Comments must be received on or before July 15, 1992.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 732–4503. Deaf and hard of hearing individuals may call (202) 732–1169 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains six proposed priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under part F of the Individuals with Disabilities Education Act (IDEA). These priorities would provide cooperative agreements to assist in the provision of closed-captioned news, movies, mini-series, and special programs, and children's and syndicated television. The proposed priorities also would provide assistance for producing and disseminating information about media technology for persons with sensory disabilities and for providing cultural experiences that enrich the lives of deaf and hard of hearing children and youth. These proposed priorities would ensure the continued availability of closed-captioned television and expand the educational and cultural opportunities available for persons with sensory disabilities in areas of identified need.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by comments received in response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only those applications that meet one of these absolute priorities:

Proposed Priority 1—Closed-Captioned National News and Public Information

Background: This priority supports cooperative agreements to continue and expand closed-captioned national news, public information programs, and emergency broadcasting, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network continue to be captioned.

Funds provided under this priority may be used to support no more than two-thirds of the captioning costs for each program hour captioned, except for short periods of time—up to six months—while private sector support is sought or for emergency announcements.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, as a separate feed, or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service, despite possible national or regional emergency situations;

(6) Demonstrate the willingness of major national commercial or public broadcast or cable networks to permit captioning of their programs by the project; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 2—Closed-Captioned Syndicated Television Programming

Background: This priority supports cooperative agreements for closed-captioning syndicated television programs, thereby making a variety of programs available at different times, depending on the local broadcast or cable station. Syndicated programming includes both previously broadcast programs or series, as well as new programs distributed for showing on individual stations.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is to be provided in real-time, as a separate feed, using live

display, offline, or reformatted—and the cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of providers of syndicated programs to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 3—Closed-Captioned Children's Programs

Background: This priority supports cooperative agreements for closed-captioning children's programs shown on national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network and cable network targeting children's audiences continue to be captioned.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(3) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(6) Demonstrate the willingness of major networks or providers of syndicated programs to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 4—Closed-Captioned Movies, Mini-Series, and Special Programs Broadcast During Prime-Time

Background: This priority supports cooperative agreements to continue and expand the closed-captioning of movies, mini-series, special programs, and other programs broadcast during prime-time on major national commercial broadcast networks. In making awards the Secretary will consider the extent to which prime-time movies and other programs on each major national commercial broadcast network continue to be closed-captioned.

Funds provided under this priority may be used to support no more than two-thirds of the captioning costs for each movie, mini-series, and special program captioned. Funds may also be used to support no more than two-thirds of the captioning costs for other prime-time programs on major broadcast networks for short periods of time—up to six months—while private or other public sector support is sought.

Priority: Projects must—

(1) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general, educational, and cultural experiences of individuals with hearing impairments;

(2) Provide a flexible plan to assure closed-captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(3) Determine the total number of hours and the projected cost per hour for programs to be captioned;

(4) Identify for each proposed program to be captioned, the source of private or other public support and the projected dollar amount of that support;

(5) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time, live display, offline, or reformatted—and include the projected cost per hour for each method used;

(6) Provide and maintain back-up systems that will ensure successful, timely captioning service;

(7) Demonstrate the willingness of major national commercial broadcast networks to permit captioning of their programs; and

(8) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Priority 5—Symposium on Educational Media Technology Relating to Persons with Sensory Disabilities

Background: This priority supports one cooperative agreement for a three-day symposium to (1) disseminate information related to current and future research and advances in the field of media technology for individuals with sensory impairments, and (2) provide recommendations for additional educational applications of this media technology. This technology includes, but is not limited to, speech recognition systems, video teleconferencing, telecommunications devices and system access, braille devices, descriptive video, and visible light spectrum. Findings from recent research in captioning technology must also be one of the focuses of the symposium. This symposium is consistent with the recommendations of the Commission on the Education of the Deaf, which studied the status of, and needed improvements in, education for individuals with hearing impairments.

Priority: This project must conduct a symposium that offers at least six commissioned presentations by professionals or experts in their respective areas, including but not limited to, educational media and technology, advanced technology, media access, and rehabilitation engineering. The project must make arrangements for discussions and responses at the symposium by participants and for developing suggestions for implementing research findings and practical implications for new and advanced technology.

Following the symposium, the commissioned presenters must refine their papers, reflecting discussions at the symposium. The project must publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses.

Proposed Priority 6—Cultural Experiences for Deaf and Hard of Hearing Children and Youth

Background: This priority supports cooperative agreements that will provide cultural experiences to enrich the lives of deaf and hard of hearing children and youth.

During FY 1992 the Department expects to fund projects that will (1) provide for the presentation of theatrical experiences for deaf and hard of hearing individuals, and (2) use an integrated approach by having among cast members a mixture of deaf, hard of hearing and hearing performers. This

priority for FY 1993 is intended to extend these experiences to younger people with hearing impairments. Projects must actively involve children and youth with and without hearing impairments in cultural activities such as the production of a play or creation of a work of art. A grantee may not use funds under this priority for passive activities such as viewing a play or video produced by adults.

Priority: Projects must—

(1) Use an integrated approach that mixes children and youth who are deaf, hard of hearing, and hearing in conducting theatrical or cultural activities or both; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

INVITATION TO COMMENT: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4620, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 332.

Program Authority: 20 U.S.C. 1451, 1452.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program).

Dated: May 7, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-14013 Filed 6-12-92; 8:45 am]

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federal register

Monday
June 15, 1992

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Federal Aviation Regulation (SFAR) No. 50-2; Special Flight Rules in the Vicinity of the Grand Canyon National Park; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Federal Aviation Regulation (SFAR) No. 50-2 Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule continues for an additional 3 years the effectiveness of the temporary procedures for the operation of all aircraft in the airspace above Grand Canyon National Park up to an altitude of 14,500 feet above mean sea level. The provisions of SFAR 50-2 originally established the flight restriction areas for a period of 4 years to allow the National Park Service (NPS) time to complete studies of the impact of aircraft overflights on the Grand Canyon and to forward its recommendations to the FAA. This rule continues the effectiveness of these procedures while NPS studies and analyses are being conducted.

DATES: *Effective date:* June 15, 1992.

Expiration date: SFAR No. 50-2 expires on June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr Fouts, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3497. Communications must identify the special rule number of the document.

Background

On June 5, 1987, the FAA issued SFAR 50-1 (52 FR 22734, June 15, 1987) which established flight regulations in the vicinity of the Grand Canyon National Park.

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at three parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. (Pub. L. 100-91).

Section 3 of Pub. L. 100-91 required the Secretary of the Interior to submit to the FAA Administrator recommendations for action necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the Grand Canyon. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and emergency operations.

Public Law 100-91 further required the Administrator of the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. The plan was to implement the recommendations of the Secretary without change unless the Administrator determined, after consultation with the Secretary an opportunity for notice and public hearing, that implementing the recommendations would adversely affect aviation safety. In that event, the FAA was required to revise the Department of the Interior (DOI) recommendations to resolve the safety concerns and issue regulations implementing the revised recommendations in the plan.

In December 1987, the Office of the Secretary of the Interior transmitted recommendations to the FAA for an aircraft management plan at the Grand Canyon. The recommendations submitted included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR 50-2 (53 FR 20264, June 2, 1988) which revised the procedures for operation of aircraft in the airspace above the Grand Canyon. The rule implemented the preliminary recommendations of the Office of the Secretary of the Interior for an aircraft management plan at the Grand Canyon with some modifications that the FAA initiated in the interest of aviation safety.

Public Law 100-91 also required the DOI to conduct a study, with the technical assistance of the Secretary of Transportation, to determine the proper minimum altitude to be maintained by aircraft when flying over units of the National Park System. The research was to include an evaluation of the noise levels associated with overflights. Before submission to Congress, the DOI is to provide a draft report (containing the results of its studies) and recommendations for legislative and regulatory action to the FAA for review. The FAA is to notify the DOI of any adverse effects these recommendations would have on the safety of aircraft operations. The FAA is to consult with the DOI to resolve these issues. The final report must include a finding by the FAA that implementation of the DOI recommendations will not have adverse effects on the safety of aircraft operations, or, in the alternative, a statement of the reasons why the recommendations will have an adverse effect.

On a continuing basis, the FAA reviews the existing rules and regulations pertaining to flight in the National Airspace System which includes the airspace over national park units. The rules currently provide for the safety of aircraft by specifying a minimum safe altitude for the operation of aircraft. The FAA will consider specific rule changes relating to aircraft overflights of national park system units, consistent with aviation safety, after completion of the NPS studies on the impact of aircraft overflights and the FAA's receipt of NPS recommendations.

On February 4, 1992, the FAA issued a Notice of Proposed Rulemaking to extend the provisions of SFAR 50-2 for another 3 years to allow the NPS to complete studies to assess the adverse impact of aircraft overflights at Grand Canyon National Park and forward its recommendations to the FAA and to Congress. At that time, the FAA will determine the necessity for adjustment of flight restrictions over the Grand Canyon National Park.

This rulemaking action continues for 3 years the effectiveness of the provisions of SFAR 50-2.

Comments on SFAR No. 50-2: Five comments were received on the proposed extension of SFAR 50-2 during the comment period. All of the commenters presented themselves as private pilots with a common interest in maintaining the ability to view and enjoy the natural wonders of the Grand Canyon from the air. The commenters generally agreed that the 14,500 foot altitude restriction over the flight free zones is discriminatory against general aviation aircraft that do not have the performance capability and oxygen equipment to operate at or above that altitude. The commenters also cited resentment of the impact environmental concerns have had on airspace usage over the Grand Canyon.

The FAA acknowledges that the altitude restrictions of the flight free zones are potentially burdensome to a large percentage of general aviation

aircraft. However, it was the intent of the Department of the Interior, as stated in previous rulemaking, to require aircraft to deviate around these zones as part of the plan for the management of air traffic over the park. In areas of the Special Flight Rules Area outside of the flight free zones, the minimum altitudes range from 5,000 to 10,000 feet mean sea level to permit transient operation of aircraft through the area at altitudes separated from congested commercial tour routes.

One commenter stated that the visual flight rules (VFR) corridors are difficult to follow for the transient pilot because they are not aligned with navigational aids.

On the contrary, in the development of the final rule the FAA received many comments suggesting that VFR corridors be realigned with the terrain rather than VOR radials since VOR signals often cannot be received at lower altitudes near the canyon due to terrain and distance from the stations. The FAA agreed and reconfigured the corridors to rely on prominent terrain features as well as VOR signals where possible. Also, the Grand Canyon VFR aeronautical chart is available for pilots transiting the area. That chart includes pictures of the terrain which is overflown in each of the VFR corridors to assist pilots in visual identification of the route.

One commenter submitted that the rule should not apply to aircraft that can be "seen and not heard" such as sailplanes.

The Grand Canyon attracts an unusual level of air traffic in the airspace above the canyon. The FAA is concerned that safety could be impacted by the concentration of air traffic, including powered and non-powered aircraft, over the canyon if the minimum altitudes were lowered. Because of the terrain of the canyon and the relatively low level of most sightseeing flights over the Grand Canyon, air traffic control procedures are not the most feasible method to segregate air traffic. The FAA believes that there is a need to separate transient general aviation traffic from the regular commercial tour operations through the designation of certain routes and altitudes for both Part 135 and non-Part 135 operators.

Environmental Review

An environmental assessment of SFAR 50–2 and a Finding of No Significant Impact were placed in the rules docket. The environmental assessment concluded that, as a result of the SFAR, certain areas of the Grand Canyon would be subject to less aircraft noise than under existing regulations; and other areas, in particular the Hermits Rest area of the south canyon rim, would be subject to slight increase in perceived aircraft noise. However, in consideration of the volume of traffic, the altitude of flight routes, and the noise characteristics of the aircraft typically used in canyon flights, the FAA has determined that no significant environmental impact would result from this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Regulatory Evaluation Summary

This action extends the provisions of SFAR 50–2 for 3 years. SFAR 50–2 was justified based on DOI's December 1987 cost/benefit analysis. Since that SFAR was published as a final rule in June 1988, the FAA has not obtained any information that is contrary to that analysis. In its original cost-benefit analysis, the DOI concluded the cost to air tour operators would be negligible, and there would be significant benefits to park resources and visitors. Therefore, the DOI determined that the requirements of SFAR 50–2 would be cost-beneficial. For lack of information to the contrary, the FAA contends that the DOI's negligible cost impact conclusion is still valid. However, a recent review of Docket No. 25149 revealed that one operator stated that his company would incur an additional operating cost of $150,000 as a result of the original SFAR 50–2 published in 1988. The FAA has solicited further comments on this SFAR concerning additional operating costs imposed on affected operators.

International Trade Impact Statement

This rule is expected to have neither an adverse impact on the trade opportunities for U.S. firms doing business abroad nor on foreign firms doing business in the United States. This assessment is based on the fact that part 135 air tour aircraft operators potentially impacted by this proposed SFAR do not compete with similar operators abroad. That is, their competitive environment is confined to the Grand Canyon National Park.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that all small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires Government agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities potentially impacted by this rule represent part 135 air tour operators with nine or less aircraft owned, but not necessarily operated. Based on FAA Order 2100.14A, the FAA's annualized threshold of significant economic impact for each of these small entities is estimated to be $60,000 (in 1990 dollars). As a result of adopting the DOI assessment of negligible cost of compliance to the small entities operating over the Grand Canyon, which was published in the cost-benefit analysis for SFAR 50–2 on June 2, 1988, the FAA concludes that this rule will not have a substantial economic impact on a substantial number of small entities.

Federalism Determination

The regulation herein will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. This regulation is promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Summary and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This amendment is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects

14 CFR Part 91

Air traffic control, Aircraft, Aviation safety, Grand Canyon.

14 CFR Part 135

Air taxes, Aircraft, Aviation safety, Grand Canyon.

The Rule

In consideration of the foregoing, the Federal Aviation Administration is amending SFAR 50–2 (14 CFR Parts 91 and 135) as follows:

PART 91—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 comp., p. 902; 49 U.S.C. 106(g).

PART 135—[AMENDED]

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

3. Section 9 of Special Federal Aviation Regulation No. 50–2 is revised to read as follows:

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1995.

* * * * *

Issued in Washington, DC on June 11, 1992.

Barry Lambert Harris,

Acting Administrator.

[FR Doc. 92–14134 Filed 6–11–92; 4:42 pm]

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S. 870/P.L. 102-299

Golden Gate National Recreation Area Addition Act of 1992. (June 9, 1992; 106 Stat. 236; 2 pages) Price: $1.00

Last List June 9, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
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